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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~348.~~ ~~85~~ 16—

THE AMERICAN EMIGRANT COMPANY, APPELLANT,

vs.

THE COUNTY OF ADAMS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED JANUARY 24, 1876.

Dec 7 1878
Affirmed
Jas ~~[illegible]~~ Bradley

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1, 2, 3 Pleas in the circuit court of the United States of America for the district of Iowa, at a term thereof begun and holden at the United States court-room in the city of Des Moines, in the State of Iowa and district aforesaid, on the second Monday of October, it being the 12th day of October, A. D. 1874, before the honorable John F. Dillon, United States circuit judge for the eighth circuit, and the honorable James M. Love, United States district judge for said district of Iowa.

4 Be it remembered that heretofore, to wit, on the 10th day of May, 1870, the American Emigrant Company, by its attorneys, Mess'rs Withrow & Wright, filed in the office of the clerk of the United States circuit court for the district of Iowa a transcript from the district court of Adams County, Iowa, wherein Adams County was complainant, and the American Emigrant Company was respondent, which said transcript is in words and figures following, to wit:

Transcript of all process, pleadings, depositions, testimony, & other proceedings in the case of Adams County vs. The American Emigrant Company, in the district court of Adams County, Iowa, as the same now appears on file in the office of the clerk of said court.

In dist. court, Adams Co., Iowa.

ADAMS COUNTY
against
THE AMERICAN EMIGRANT COMPANY. } No. 153. Chancery.

Be it remembered that on the 28th day April, 1859, pl'ff filed its petition in the office of the district court of Adams County, Iowa, in words & figures following, to wit:

5 In the district court of Adams Co., Iowa.

ADAMS COUNTY
vs.
AMERICAN EMIGRANT COMPANY. } Petition in equity.

Your petitioner, Adams County, claims of defendant, the American Emigrant Company, a foreign corporation or partnership, doing business *doing business* in the State of Iowa, the rescis'ion and cancellation of certain contracts for the sale of swamp lands and swamp land funds and scrip, and the restoration of lands, moneys, rights, interests, and claims hereinafter described; the cancellation and setting aside of the deeds of conveyance, covenants, and other writings hereinafter described; also, a decree for a return of seven thousand dollars money and a vendor's lien upon lands hereinafter described, with interest at six per cent. from June 1st, 1865; and a decree for fifteen thousand dollars money and a vendor's lien upon lands hereafter described, and for cause states—

6 1st. That on the 3rd day of September, A. D. 1862, one H. C. D. McKay, general agent, as he represented himself, for the defendant in the State of Iowa, proposed to the board of supervisors of Adams County, for and on behalf of defendant, to purchase the swamp lands of Adams County, for the purpose of improving them, by sending foreign emigrants into the county, draining and improving the swamp lands of the county, and erecting & creating farms of the usual ordinary size,

which, said agent represented, would be greatly to the advantage of the county, in improving the wealth of the county and enlarging the number of tax-payers, thereby reducing the *sale* of tax, and improving the society, by bringing in intelligent foreign emigrants.

That said agent, being an eloquent person, expatiated largely upon the advantage of having the swamp lands drained and improved, and proposed to the board of supervisors to buy of them about two
7 thousand acres of swamp lands, of which the county then had apparent right to dispose (having been patented to plaintiff by the State of Iowa). As the exact amount of lands were at that time unknown, it was stated or supposed to be at two thousand acres, the county having patents for three thousand six hundred and eighty acres, but had previously disposed to pre-emption of about fifteen or sixteen hundred acres; he proposed to purchase the remaining two thousand acres at one dollar per acre, and put intelligent foreign emigrants upon them to drain & make farms thereon, taking a quitclaim deed from the county for such lands, for the gross sum of two thousand dollars; and as the county had some claim pending for other lands not patented, and for funds, out of which said agent, falsely & fraudulently pretending he knew all about, and giving deceiptful assurances of his virtuous purposes, declared nothing could or would ever be realized the county,
8 proposed to just include in the proposed purchase all lands & funds accruing to the county under all swamp lands acts of Congress and of the Iowa legislature, the said agent proposing to pay the said proposed two thousand dollars in building bridges and making other internal improvements, and made great talk about plans and specifications. The board of supervisors, being ignorant of the real condition of the swamp lands and funds, and of the facts in the case, and relying upon the false representations of said agent, and being completely deceived in the premises, entered into the contract, a copy of which is hereto attached, marked "Exhibit A," and made part hereof, and ordered that a poll be opened at the next election then, on the 14th of October, ensuing; and the said McKay, and other persons in def't's interest, making false representations in the same way to the people just before the election, secured ratification of the said contract
9 by the people, whereby it was by the board supervisors declared adopted and of binding power and effect; and on the 21st day of October, A. D. 1862, the said board of supervisors, at request of defendant, appointed one J. C. Savey nominally agent of plaintiff, but real agent of defendant, to settle and take care of Adams County swamp lands & funds, as will appear by Exhibit Letter A attached & made part thereof.

And on the 7th day of September, A. D. 1863, the said board of supervisors, still relying upon the honesty and good faith of defendant and their agents, executed a quitclaim deed to 3,680 $\frac{57}{100}$ acres land, being the same description of lands which had been previously patented as aforesaid to plaintiff, but which was effected to pass a good title for fifty forty-acres tracts, or about 2,000 acres of land, as described in Exhibit H attached, which deed contained additional covenants extending defendant's rights under the aforesaid contract, a copy of
10 which deed and covenants are hereto attached marked "Exhibit Letter B," & made part hereof.

Your petitioner further alledges that on the 7th day of September, A. D. 1864, at request of defendant by her said agent, the board of supervisors, still relying upon def't's honesty and good faith, a further written contract was made extending the liberty granted in the first

contract to defendant to settle his intelligent emigrants upon other lands, provided they were brought into the county, modifying the original contract to that extent, a true copy of which second modification is hereto attached marked "Exhibit Letter E," & made part hereof.

Plaintiff alleges that all of said contracts and extensions operated to defendant's advantage and to the disadvantage of the county, and placed the drainages, settlement & improvements of swamp-lands
11 under defendant's control, and the custody of funds to their possession, & were obtained through false & fraudulent representations made by defendants & their agents in their interest, by the concealment and misrepresentation of important facts, upon the truth of which plaintiff, the board of supervisors, and the people of the county relied, and by reason of which misrepresentations the said contract & deed are fraudulent & void.

Plaintiff further represents that by the terms of said contract plaintiff was bound to convey not only the two thousand acres, but many thousand acres to which plaintiff then had a perfect equitable right as well as many thousand dollars in money falsely represented as of no value, and to which the plaintiff had no right by said def'ts and her agents.

Plaintiff charges the truth to be that plaintiff had not an imperfect title to the aforesaid 2,000 acres os represented by said def'ts, but a perfect fee-simple title of the highest grade directly from the
12 United States and the State of Iowa, and also that plaintiff had a perfect equitable right to 3,627 $\frac{61}{100}$ acres of other valuable lands, which defendant procured to be placed in the contract by their false representations. And, also, that plaintiff had a perfect right to recover of the United States $7,643 $\frac{57}{100}$ *dollars* indemnity money, which was also covered by said contract under the name of funds, falsely & fraudulently procured to be inserted into said contract, the board of supervisors and people being entirely ignorant of the facts of having such right, or that the right to claim such money existed, and that the United States stood ready to pay off said claims, or that there was any such money due the county.

Plaintiff further charges that in the year 1860 one William A. Shield, acting county judge of plaintiff, appointed an agent to take indemnity proof to recover the said sum of $7,643 $\frac{57}{100}$ *dollars*, which proof
13 was duly taken and filed with the Commissioner of the General Land Office at Washington City, and were in due form awaiting in their order to be paid, and were paid in the year 1865 to the said J. C. Savry, F. C. McKay, and other agents of defendants, who applied the money to the use of defendants; that defendants at time of contracting represented the aforesaid proof to be informal and worthless, and that the board of supervisors & people relied upon such representations which were they knew to be false, which def't knew at the time, and plaintiff expressly charges that the said proofs were regular and were in form for payment, and were paid, or would have all been paid, had they been presented and examined; a few of the proofs not being paid because they were overlooked by mistake of the United States officer, and not looked up by fault & negligence of said J. C. Savery.

Plaintiff further charges that about two thousand acres of land
14 have since at different times been patented to plaintiff since the date of said contract, which by the terms of said contracts plaintiff would be bound to convey on request to defendants, and that plaintiff verily believes that nearly three thousand acres yet remains to be patented to plaintiff to go in like manner; that plaintiff has never

received any consideration for these large sums of money and their valuable tracts of land included in the contract; that the possession of said money and making of contracts to convey said land were obtained by misrepresentation and fraud, and are wrongful, illegal, without consideration and void.

That defendant never built any bridges nor other internal improvements, nor never paid a cent of their own money, but plaintiff charges that defendant in May or June, 1865, having obtained possession of several thousand dollars indemnity funds, rightly belonging to
15 plaintiff, did out of such money pay to the treasurer of Adams County two thousand dollars in two United States bonds and kept the rest. But that defendants never paid a cent of their own money nor any money until they got money from the indemnity proofs they so loudly and falsely represented as worthless.

Plaintiff charges that in consequence of the bad faith of defendants in refusing to perform their part of said contract, plaintiff has been compelled by law to pay and to legislate claims justly charg'able to and contracted to be paid by defendants all of the said two thousand dollars, and seven hundred dollars more in interest, costs, & attorney fees, as will be hereafter fully set forth, whereby the said defendant' have compelled the plaintiff to refund the said two thousand dollars, by reason of which bad, faithless, fraudulent conduct the two thousand dollars consideration in the original contract has returned to de-
16 fendants, and entirely failed as to plaintiff, and plaintiff is now seven hundred dollars worse off than loosing all the 7,643 $\frac{57}{100}$ dollars indemnity, and seven thousand acres of lands, all through the frauds & bad faith of defendants.

Your petitioner further charges that by the terms of the original contracts, defendants were to drain and settle and improve one-third of the swamp land in three years, one-third in five years, and the whole to be settled in 8 years, and by the modified contract the defendants was to send so many settlers into the county in good faith. But your petitioner charges that seven years have elapsed and defendants have not sent a single bona fide emigrant into the county, nor have they sent in a single settler who has settled, drained, and improved a single acre of swamp-land.

That one of the main considerations for making the contract by plaintiff was that the land should be drained at time agreed upon, and if after drainage, according to acts of Congress and the Iowa
17 legislature ceding such lands to the county, it should be fit for settlement, then it should be settled.

Plaintiff alledges that all of said lands, if properly well drained, are fit for settlement, and therefore plaintiff charges that this said consideration has failed. Plaintiff says that defendant has sold many of said lands for cash to resident land owners, who have never drained or improved the same, and put the money to their own use, disposing of said lands purely on speculations and not for settlement, in good faith, as agreed. That one or two tracts of such lands have been settled upon by residents of the county and persons not sent or coming into the county under influence or through the instrumentality of defendants, but in ordinary course of emigration, and defendants have entirely failed in any substantial compliance with their contract, and the consideration of such contract has failed, the time of performance
18 having passed performance has now become impossible, and plaintiff has no legal remedy; adequate and complete compensa-

tion cannot be estimated upon the damage arising from retarding the growth and wealth and improvement of the county.

Plaintiff charges that if the plaintiff had had control of the lands and funds which have been in possession of defendants under this contract, all of said lands could have been drained and improved, to the great advantage of plaintiff and the people of the county.

Plaintiff further alleges that by the terms of the contract aforesaid the defendants were to respect contracts existing between plaintiff and other persons, in relation to such swamp-lands & funds as the board of supervisors should decide to be just and right, which part of said contract they have refused to perform, in this, that F. M. Davis had a just and right claim against the swamp-land funds, for
19 taking proofs upon which indemnity was paid, which claim the board of supervisors decided to be just & right, but the defendants refused to pay the same, and through their agent, one John Bixley, agent for defendants in Adams County, their attorney, and other persons for them and in their interest induced plaintiff to litigate the said claim against the said Davis, the said defendants, through their said agent, promising to pay all costs out of their funds and attorney fees, and any judgment which said Davis might recover against the county; that the plaintiff relying upon the good faith of defendants, then refused to pay said claim, and after a thorough litigation of said Davis right, the county was adjudged to pay $2,200 *dollars*, and 104 $\frac{40}{100}$ dollars costs of suit, besides one hundred and fifty dollars attorney fees, and other incidental expenses, all of which will fully appear by reference to Exhibits D & E, hereto attached & made part hereof.

20 That defendants refused to pay this judgment and induced plaintiff to give authority to prosecute or appeal to the supreme court, def'ts promising to pay costs, &c.; that plaintiff's board of supervisors still relying upon def't's promises, gave the authority to appeal, whereby they were in the supreme court adjudged to pay $16 $\frac{25}{100}$ *dollars* costs of appeal, as will fully appear by reference to Exhibit Letter F hereto attached, all of which sums of money defendants neglect and refuse to pay, and which the county has been compelled, by execution and judgment, to pay; defendant now refuses to pay plaintiff any part of the same, although often requested to do so, demand having been made several times during the last year, whereby defendant has been guilty of a gross breach of their contract, thereby defeating the consideration of said contract and taking back the two thousand dollars previously paid, and thereby rendering said contract null and void.

Plaintiff further represents that the frauds, misrepresentations,
21 and concealments of defendants were not discovered by the county and were unknown until the summer & fall of the year 1865, and since that time, and the breaches of contracts occurred since that time.

Plaintiff further alleges that the entire amount of judgment, interest, costs, & attorney fees plaintiff has been compelled to pay for defendants, including costs of making demands, &c., are in the sum of 2,700 dollars, for which plaintiff asks interest since the date of payment; all of which will more fully appear by reference to Exhibit Letter E, hereto attached & made part hereof. And plaintiff further alleges that by reason of the frauds and failures of defendant the consideration has failed, the contracts & deeds aforesaid are void, and the county plaintiff herein has elected to rescind the same, and the board of supervisors have, after due demands, passed a resolution to rescind such inconceiv-

able contract, a copy of which is hereto attached, marked "Exhibit Letter G," made part hereof.

22 Plaintiff further charges and alleges that one of the covenants of the deed executed by plaintiff was a condition that the deed should not be delivered until the defendant should execute and acknowledge, ready for record, a good and sufficient mortgage upon all the lands so conveyed back to plaintiff, thereby securing plaintiff in the fulfillment of the contract by defendant; that it was also provided in the original contract that if any lands should be conveyed from plaintiff to defendants by deed then defendant was to reconvey them to plaintiff by mortgage, to secure the performance of the terms of the original contract as to payment of money, settlement, drainage, and all the other conditions of the said contract and covenants.

Plaintiff charges that the said deed, in pursuance of such covenant, was delivered to the clerk of the district court of plaintiff upon this express condition, that it was not to be delivered except on the

23 execution of the mortgage as described; but plaintiff alleges that defendants having failed to perform other parts of their contracts got possession of said deed through fraud, and without any authority; that said deed was never delivered by the board of supervisors, nor by their clerk, by their authority, but that defendants failing to execute the mortgage as covenanted got and procured, through fraud or mistake of the clerk, the said deed, and placed it upon the record of the Adams County and records, in book E, page 539, 540, 541, 542, and having procured said possession & fraudulent delivery refused to secure and neglect' to perform these covenants, and continue to hold the lands conveyed thereby, leaving the county without the remedy as contracted to enforce the performance of the said contract.

Plaintiff further alleges that in addition to the lands & money heretofore described there was also included in said contract, under

24 the name of claim and funds falsely represented, as aforesaid, worthless and valueless, a valid claim for about two thousand acres, or thereabouts, of indemnity scrip, issued by authority of United States, at a compensation in lieu of indemnity money for swamp lands located & purchased of United States by military bounty-land warrants prior to the selections of such lands as swamp lands. Under the acts of Congress such scrip authorized the patenting of other lands in lieu of swamp lands indemnity money, and that, in pursuance thereof, there has been patented to the county of Adams, from the State of Iowa, nine hundred forty-seven & $\frac{12}{100}$ acres, as set forth in Exhibit Letter I, hereto attached and made part hereof, the legal title to which land is yet in the county, subject to be conveyed upon request as set out in the contract aforesaid.

That said claim was fraudulently included in the said contract

25 in ignorance of the facts by plaintiff, and the concealment and misrepresentations of defendants & her agents; plaintiff's board of supervisors and agents being ignorant of the existence of any such claim at time of contract ratifications and extensions, except the agent appointed by said Shields, F. M. Davis, who at time of making said contracts and ratifications was absent f'om county, and knew nothing of what was transpiring.

That said defendants claim a right to a deed from plaintiff for said lands, and the plaintiff will be compelled to deed them unless relieved from the binding force of said contract, and for that he has no remedy at law adequate and complete.

Plaintiff further says the above lands were deeded to Adams County

under the express trust that the proceeds thereof was to be applied to draining and improving the lands sold by the United States, as aforesaid, instead of the indemnity money, a list of which lands to be drained with proceeds of indemnity lands, so patented as aforesaid, are
26 hereto attached, marked "Exhibit Letter K," and made part hereof, no part of which lands have ever been drained by defendants, nor is plaintiff in anywise released from her liability to perform said trust.

Plaintiff further sets forth a list of lands in odd sections patented to plaintiff since the date of the deed above set out, the legal title to which remains in the county, which plaintiff asks to be considered part of this petition, hereto attached, marked Exhibit L. Your petitioner further charges and alleges that the defendants have received large sums of money from the United States at different times, to wit, $4,303\frac{45}{100}$ *dollars* at one time, $900 *dollars* at another time, and divers other large sums of money at different time', which plaintiff cannot now set forth, amounting to the sum of probably eight thousand dollars, which was paid by the United States to them by virtue of the nomination of J. C. Savery, as agent of the plaintiff aforesaid, which money was paid
27 over under the acts of Congress of 28th Sept., 1850, & 2nd of March, 1855, and subsequent acts, authorizing indemnity for swamp lands sold as indemnity money, under the express trust and proviso that plaintiff was to apply the said moneys in reclaiming, draining, and fitting for cultivation six or seven thousand acres of swamp lands, sold by the United States before the swamp land selections were approved, as provided by law.

That said plaintiff cannot now set out an exact description of the lands, but avers that they are the same lands for which cash indemnity has been paid the State of Iowa for swamp lands sold by the United States in Adams County. Plaintiff says that five thousand dollars of said money was paid over in 1865 or thereabouts, and that defendants, instead of applying said moneys to reclaim and drain said swamp lands, put it to their own use, and refuse and neglect to drain the lands or dispose of the money for the purposes they received it, and as
28 they had contracted to do, this breaking their contract and injuring plaintiff greatly, beside leaving the county responsible for the draining of said lands. Plaintiff charges that the defendants have utterly failed to drain any lands, either deeded or for which cash or land indemnity has been granted, by reason of all which frauds, misrepresentations, concealments, and known false pretensions and representations, and failures, laches, neglects, breaches of contract, the said contract has become an injury and a nuisance, plaintiff not being able sell the land by the clouds created by the deed & contract nor realize any benefit therefrom, whereby plaintiff has elected to rescind, and the same has become null & void.

2nd. Your petitioner alleges that by virtue of said written contract as aforesaid, defendants were to pay all claims and respect all contracts there existing against said lands or funds as the board of supervisors should decide to be just and right, and plaintiff alleges that one
29 F. M. Davis, claiming a per cent. of the indemnity moneys & scrip for proofs he had taken which the board of supervisors decided to be just and right, but the said defendant refused the payment of the same, and through her agent, one John Bixby, who was agent for defendant in and for Adams County, and also clerk of the district court of plaintiff and others in defendant's interest, which agent promised the board of supervisors that if they would litigate the claim of

Davis the American Emigrant Company would pay all judgment obtained, costs, & att'y fees; that at request of def't, and for their use and benefit, plaintiff did litegate said claim, hireing such counsel as her agents directed, and that the judgment for costs in the district & supreme courts, and att'y fees and amount of the claim on payment was in the sum of twenty-seven hundred dollars, as will fully appear by exhibits hereto attached and made part hereof as heretofore referred
30 to in exhibits marked Letters D, E, & F, all of which money was paid out at defendants' request and for their use and benefit, which they refuse and neglect to repay although often requested so to do; plaintiff therefore asks that he have a decree for said sum, with interest since the respective dates of payment, in the sum of three thousand dollars and costs of suit, and that plaintiff have a decree for a vendor's lien upon the lands heretofore described in Exhibits Letters H, I, & K, and being the same lands contracted to be conveyed by plaintiff and upon which the said above claims or debts is a just and subsisting charge in equity, and that special execution be issued to sell said lands, and in case they do not sell for sufficient to pay judgment & costs that a general execution issue against defendants therefor, and for costs and general equitable relief as the plaintiff may show themselves entitled to.

Plaintiff therefore prays for a decree of this honorable court
31 declaring the original contract as above set forth, with all modifications and extensions, absolutely null and void, rescinded and cancelled, and of no force and effect, and that plaintiff be forever discharged from all obligations to perform said contract. Also a decree declaring the deed set forth (Exhibit B) be declared null and void, cancelled and rescinded, and delivered up for destruction, and that plaintiff be decreed into possession of the aforesaid lands which enured to said defendant as described in the deed and exhibit (H) hereto attached. And also a decree quieting plaintiff's rights in and to the lands patented in odd sections in said county as set forth in Exhibit Letter L. And a like decree for lands granted as indemnity lands set forth in Exhibit Letter I.

Plaintiff also prays that an account may be taken of indemnity moneys paid to defendants and received by them, and that plaintiff may have a decree for their return, with interest from date of receipt
32 thereof, and that execution may issue therefor, and that he may have executions for costs herein expended, with general & special equitable relief such as this honorable court shall think plaintiff entitled to and *and* agreeable to equity and good conscience.

And in case the court shall be opinion, after a fair hearing, that plaintiff is not entitled to rescind the whole of said contract, then plaintiff asks that they be relieved from and allowed to rescind so much of the contract as relates to the future conveyance of lands, and have a decree for indemnity money and money paid out to defendant's use and benefit on the claims of F. M. Davis as set forth in the foregoing petition, and a vendor's lien upon the lands described in Exhibit H as enuring to the defendants under the deed aforesaid, and that execution issue against said lands to recover said money. And in case the court shall be of opinion that plaintiff is not entitled to rescind any
33 part of said contract, but shall be of opinion that plaintiff is entitled to damage for non-performance or a return of money paid with interest, costs, and attorney fees in the payments of claims, judgments, &c., to F. M. Davis, then plaintiff prays a decree in the sum of fifteen thousand dollars, and that plaintiff be declared to hold & have a vendor's lien upon lands heretofore conveyed and upon lands the legal

title of which is yet in the county described in Exhibits I & L, and that special execution issue against said lands to recover the amount of said decree, and if the said lands are insufficient that a general execution issue against defendants for the balance.

Plaintiff also prays for a decree for costs, for special and general relief, according to equity principles and jurisdiction, & according to good conscience.

ADAMS COUNTY.
By FRANK M. DAVIS & WELLS & CUMMINS,
Att'y.

STATE OF IOWA,
Adams County:

34 H. G. Ankey, chairman of the board of supervisors, duly sworn, on oath says he has heard the above petitioner read, and knows its contents, and that part of the facts stated therein are true of his own knowledge, and the other facts therein stated affiant is informed and verily believes to be true.

(Signed) H. G. AUKENY.

Subscribed and sworn to before me this 28th of April, A. D. 1869.
[NOTARIAL SEAL.] FRANK M. DAVIS,
Notary Public.

EXHIBIT A.

Agreement made the 3*t*d day of September, A. D. 1862, between the county of Adams, in the State of Iowa, of the one part, and the American Emigrant Company, by F. C. D. McKay, their general agent for the State of Iowa, of the other part.

The said county hereby donates the swamp lands belonging to said county, and all the fund and claim of the county on the General Government therefore, to the making of the improvements hereinafter mentioned by said company, and agree to sell, release, and convey
35 the same to said company, according to this agreement.

The said company agrees to take said lands and fund and claim, and to make for said county any public works or improvements therefor which the board of supervisors may request, and which are authorized to be made thereunto by law, of the full amount and nature of two thousand dollars. The specifications for such work to be furnished by the board of supervisors from time to time, as they prefer, at any time after October 1st, 1863, and the work to be finished according to such specifications by one year from the first day of January after the furnishing of such specifications.

In order to ascertain the value of such work and improvements, it is agreed that if the board of supervisors shall offer to superintend the making of such improvements without charge to said company, then the said company shall pay into the treasury of said county the said sum of two thousand dollars in current funds as soon as the
36 first day of January, A. D. 1865, and if said board does not choose to superintend the making of said improvements, then the jobs are to be let at public auction to the lowest respossible fair bidder, who shall give ample security for the fulfillment, in the usual manner of letting such jobs.

No taxes are to be assessed against the property agreed to be sold by

this contract while the county holds the legal title thereto, or the equitable title by mortgage or otherwise, but as any of it is sold to purchasers, the same may be taxed, and the company agree to settle all said lands fit for settlement with white settlers and purchasers, and by selling farms of the usual average size, one-third thereof in three years, another third in five years, and the whole of said lands in eight years, from the ratification of this contract and the canvass of the votes. Any part of said land-fund or claim the county will assign and convey
37 too said company or its agent at any time on request; but if the claim of the county be not fully paid and satisfied, the entire interest so conveyed shall be mortgaged back to the county, to secure the fulfillment of this contract, unless other satisfactory security be given therefor.

The company takes said land subject to all the provisions of the act of Congress of September 28th, 1850, and expressly release the State of Iowa and the county of Adams from all liability in reclaiming said lands, or in the drainage thereof.

Any contract now existing between the said county and any person, in relation to said lands or funds, are to be respected and fulfilled by said company, as the board of supervisors shall decide to be just and right.

The board of supervisors will appoint any agent to transact any business relating to said lands, land-fund, or claim, which said company or its agent may indicate or request; but in no case shall the county be responsible for the faithfulness of such agent, or for any costs or expenses thereof.

38 No lands for the sale of which the county has given a bond for a deed, or a deed, are included in this agreement, nor the proceeds thereof, nor are the lands to which F. M. Davis is entitled by a contract heretofore made, and if the company obtains the odd sections so called, those who have claims on them are to be treated as the board would treat them if this contract had not been made by order of the board.

JOHN BARNETT, *Chairman.*
JOHN BIXBY, *Clerk.*

THE AMERICAN EMIGRANT COMPANY,
By F. C. D. McKAY,
Their General Agent for the State of Iowa.

EXHIBIT B.

STATE OF IOWA,
Adams County:

And whereas, at a regular meeting of the board of supervisors of the county of Adams, in the State of Iowa, at Quincy, in said county, on the seventh day of September, A. D. 1863, the following proceedings were had relating to the sale of the swamp and overflowed
39 lands of said county to the American Emigrant Company, that is to say:

Whereas the American Emigrant Company has requested this county to convey to the trustees of said company, in trust for said company, the swamp and overflowed lands of said county and the indemnity claim of the county on the United States, the same which has been contracted to be sold to said company by a written agreement between the county and the company bearing date the 3d day of September, A. D. 1862, and

which is now on file in the office of the clerk of the district court in said county;

And whereas the said company does not ask such conveyance except upon condition that the land and property so conveyed shall be fully mortgaged back to the county to secure the county the fullfilment by the company of the terms and conditions of the said written agreement:

Therefore it is resolved that this board does now grant, sell,
40. and convey to the trustees of said company as requested the land and property hereinafter mentioned and described in the following form, that is to say:

This indenture made this seventh day of September, in the year of our Lord one thousand eight hundred and sixty-three, between the county of Adams, in the State of Iowa, of the first part, and Andrew G. Hammond, John Hooker, and Henry K. Welch, of the city of Hartford, in the State of Connecticut, trustees, and in trust for the American Emigrant Company, of the second part, witnesseth:

The said county of Adams, in and by a certain agreement in writing made by and between the said county and the said American Emigrant Company, bearing date the third day of September, in the year one thousand eight hundred and sixty-two, and now on file in the office of the clerk of the district court of said county, has sold to said company all the swamp and overflowed lands of said county and all the claim of said county in the United States for or on account of such of said
41 swamp or overflowed lands as have been sold for cash or located with warrants or scrip by or under the authority of the United States since the swamp-land grant so called.

Now, therefore, in pursuance of said agreement in writing, and in consideration of the sum of two thousand dollars to the said party of the first part paid by said company, the said party of the first part doth hereby sell, assign, transfer, and quitclaim to the parties of the second part, as such trustees as aforesaid, all and singular the lands and real estate hereinafter mentioned and described, the same being situated in the said county of Adams, that is to say, the southeast quarter of the southwest quarter and the north half of southeast quarter of section number eight, and the northeast quarter of the northeast quarter, the northwest quarter of the northwest quarter, and the east half of the northwest quarter of section eighteen, township number seventy-
42 two north, of range number thirty-five west of the fifth principal meridian, containing in all two hundred and seventy-five acres and sixty-two hundre'ths of an acre ($275\frac{62}{100}$);

The east half of the northwest quarter of section number twenty-eight, and the southeast quarter of the southwest quarter, the north half of the northwest quarter, the northwest quarter of the northeast quarter, and the north half of the southeast quarter of section number thirty, township number seventy-two north, of range thirty-three west of the fifth principal meridian, containing in all three hundred and thirty-one acres and seventy-four hundre'ths ($331\frac{74}{100}$) of an acre;

The south half of the southwest quarter, the southwest quarter of the southeast quarter, and the northeast quarter of the northeast quarter of section number six, township number seventy-three north, of range thirty-three west of the fifth principal meridian, containing one
43 hundred and fifty-eight and seventeen hundre'ths of an acre ($158\frac{17}{100}$);

The northwest quarter of the northeast quarter of section No. two, and the north half of the southwest quarter of section No. eight, the northeast quarter of the northwest quarter and the northwest quarter

of the northeast quarter of section No. eighteen, in township No. seventy-one north, of range No. thirty-four west of the fifth principal meridian, containing one hundred and ninety-seven acres and twenty-three hundre'ths of an acre (197$\frac{23}{100}$);

The north half of the northeast quarter and the southwest quarter of the northeast quarter of section number six, the east half of the southeast quarter of section number thirty, the south half of the northwest quarter, the northeast quarter of the northwest quarter, and the northeast quarter of section No. thirty-six, in township No. seventy-two north, of range thirty-four west of the fifth principal meridian, containing in all four hundred and sixty-five acres and fifteen hundre'ths of an acre (465$\frac{15}{100}$);

44 The east half of the northeast quarter and the east half of the southeast quarter of section number twelve, the southeast quarter of the southwest quarter, the northwest quarter of the southeast quarter, and the northeast quarter of the northeast quarter of section number fourteen, the southeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of section No. twenty-two, the northeast quarter of section No. twenty-eight, and the northwest quarter of the northwest quarter of section number thirty-two, in township number seventy-three north, of range thirty-four west of the fifth principal meridian, containing five hundred and sixty (560) acres;

The southeast quarter and the southeast quarter of the northeast quarter of section No. ten, the southwest quarter of the northwest quarter and the northwest quarter of the northeast quarter of section number twelve; the northwest quarter of the southwest quarter, the

45 southeast quarter of the southwest quarter, and the west half of the northwest quarter of section number twenty; the east half of the southwest quarter, the northwest quarter of the southeast quarter, the southeast quarter of the northwest quarter, and the west half of the northeast quarter of section No. thirty, in township No. seventy-one north, of range No. thirty-five west of the fifth principal meridian, containing in all six hundred and eighty (680) acres;

The northwest quarter and the west half of the southwest quarter of section number twelve, the southwest quarter of the northwest quarter of section No. fourteen, southeast quarter and the south half of the southwest quarter of section number twenty, the east half of the southwest quarter, the north half of the southeast quarter, and the southwest quarter of the southeast quarter of section number thirty, in township number seventy-two north, of range thirty-five west of

46 the fifth principal meridian, containing in all one thousand and twelve acres and sixty hundre'ths (1,012$\frac{60}{100}$) of an acre, and containing in the aggregate three thousand six hundred and eighty acres and fifty-one hundre'ths (3,680$\frac{51}{100}$) of an acre.

It is hereby declared to be an express condition of this grant that in case said county at this time has not fully obtained a perfect title in fee to any of the said lands, that any interest, claim, or title thereto the county shall hereafter acquire under or by virtue of the said swamp land grant shall inure to the benefit of the party of the second part without any further subsequent conveyance thereof, anything herein contained to the contrary notwithstanding.

It is also a like condition of this conveyance that in case any lands are included in any of the foregoing descriptions which were not or are not constructed to be sold to said company in and by said agree-

47 ment in writing so on file as aforesaid, the same are reserved and excepted from the effect and operation of this conveyance, and

are not intended herein or hereby to be conveyed, and all lands reserved from the operation of the said agreement in writing are also reserved from the effect and operation of this conveyance, and the said party of the first part doth further covenant and agree that all the lands within the said county that may at any time be duly selected as swamp or overflowed lands, and all such lands as may not be included in this conveyance, if any, the party of the first part will at any time convey by deed similar to this conveyance at the request of the American Emigrant Company to the said company, its trustees, or its assigns.

That any proceeds of the said claim on the United States, if any proceeds shall be received, the party of the first part will at any time on like request assign and transfer in separate or more convenient
48 form to said company, its trustees, or its assigns, and any lands that shall be located under or by any scrip so called which may be obtained on said claim, the party of the first part will (will) convey in like form to said company or their trustees, or assigns, on reasonable request so to do.

The party of the second part takes this grant subject to all the provisions of the act of Congress of September 28th, 1850, and expressly release the State of Iowa and the said county from all liability for reclaiming said lands.

Given under the hands of the board of supervisors of the said county of Adams, by order of the board of supervisors.

SHERMAN H. BISBEE,
Chairman.

H. A. SMUR,
R. H. SCHOOLING,
O. B. CASE,
SAMUEL HARDESTY,
SILAS RIGG,
J. H. SMITH,
P. K. LAWERANCE,
Supervisors.

JOHN BIXBY,
Clerk of the Board of Supervisors.

Resolved, That the said conveyance in the foregoing form be ex-
49 ecuted by this board and duly acknowledged, so that the same may be recorded, and when so executed be delivered to the clerk of the district court of this county, to be by him delivered to the said company, its agents, or trustees, whenever a mortgage in due form, duly executed and acknowledged by said trustees and ready for record, shall be delivered to him, the said clerk, which mortgage shall fully convey back to said county all the land and property granted to said trustees by this conveyance, and shall secure to said county the fulfillment by the American Emigrant Company of all the terms and conditions of the said written agreement so on file, as aforesaid, so far as the same are to be kept and fulfilled on the part of said company.

Resolved, That the yeas and nays on the passage of the foregoing preamble and resolutions be, and the same are hereby demanded, and shall be taken by the clerk.

Whereupon, on this the seventh day of September, A. D. 1863,
50 on motion, the foregoing preamble and resolutions were put to vote, and on such vote the following named supervisors, members o said board, voted yea, that is to say: O. B. Case, S. H. Bugbee, H. A. Smur, Silas Rigg, P. K. Lawrance, R. H. Schooling, J. H. Smith, and

Samuel Hardesty, in all eight yeas, the same being an unanimous vote of the said board.

STATE OF IOWA,
Adams County:

On this seventh day of September, in the year one thousand eight hundred and sixty-three, personally came before me the undersigned county judge of the said county, the said Sherman H. Bugbee, H. A. Smur, R. H. Schooling, O. B. Case, Samuel Hardesty, Silas Rigg, J. H. Smith, and P. K. Lawrance, supervisors, and John Bixby, clerk of the board of supervisors of said county, severally to me known to be the identical persons whose names are affixed to the foregoing con-
51 veyance as grantors, and who executed it and severally acknowledged said instrument of conveyance to be their voluntary act and deed *and their voluntary act and deed* as the board of supervisors of the county of Adams.

[SEAL.] SAMUEL LARINER,
County Judge.

Exhibit C.

On motion, the following modification in the contract between this county and the American Emigrant Company is agreed to and adopted, and that the chairman of the board and clerk sign the same on behalf of the board.

It is agreed between the board of supervisors of Adams County and the American Emigrant Company that that part of the original contract between them which provides that such lands as are fit for settlement sold to said company should be settled in three, five, and eight years, be changed, and that it be as follows: That said company shall
52 cause to come into said county as many persons who shall become actual settlers as they would have to bring in order to fulfill said contract as it was previous to this change, but that such persons may settle either on the lands so sold to said company, or on any other lands in said county, and that such settlements shall be deemed to be in fulfillment of said contract the same as though they all settled on lands so sold to said company.

By order of the board.
Dated Sept. 7th, 1864.

B. O. STEPENSON,
Chairman.

JOHN BIXBY, *Clerk.*

THE AMERICAN EMIGRANT COMPANY,
By F. C. D. McKAY.

OCTOBER 21ST, 1862.

On motion, the following resolutions were adopted as the sense of this board:

Resolved by the board of supervisors of Adams County, Iowa, That James C. Savery, esq., of Des Moines, Iowa, be, and is hereby,
53 nominated to the gove'nor of the State of Iowa as a suitable person for special agent for the State the swamp-land claimes of the said county of Adams upon the General Government, pursuant to the thirteen section of an act of the general assembly entitled "An act to authorize the governor and board of county supervisors to appoint agents in regard to swamp lands belonging to the State of Iowa, and

defining their duties," approved April 8th, A. D. 1862; which appointment is respectfully requested in order to expedite the settlement of such claims.

2nd. Resolved, That the interests of the county of Adams will be best promoted by the appointment of such special agent rather than by the general agency provided by said act.

3rd. Resolved, That the said county of Adams pay the costs and expense of such special agent and his compensation, and that he is authorized to receive the proceeds of such settlement and deliver the same to the board of supervisors of said county.

Adopted unanimously.

Approved.

JOHN BARNETT,
Chairman.

54 STATE OF IOWA,
Adams County:

I, Sherman H. Bugbee, acting auditor of Adams County, Iowa, and clerk of the board of supervisors, hereby certify that the above and foregoing are true, correct, and litteral exemplification and copies of the records of proceedings of the board of supervisors of Adams County, Iowa, as they now appear of record in my office.

Witness my hand & seal of the board of supervisors this 27th of April, A. D. 1869.

[SEAL.]

S. H. BIGBEE,
County Auditor.

55 EXHIBIT D.

Now at this time the jury having heard the argument of the counsel and the instructions of the court, retire in charge of an officer of the court to consider of their verdict; and, after due deliberation, return into court, and, all being present, on oath, say:

"We, the jury, find for the plaintiff, and allow him his twenty-two hundred dollars."

It is, therefore, considered by the court that the plaintiff, Frank M. Davis, have and recover of Adams County the sum of twenty-two hundred dollars, with interest thereon at the rate of six per cent. per annum, as his debt, and the further sum of one hundred and four & $\frac{40}{100}$ dollars as his costs in this suit expended, and that execution issue therefor.

STATE OF IOWA,
Page County:

I, Jacob Butler, clerk of the district court in and for said county, do hereby certify that the within and foregoing is a full, true transcript of the judgment in the cause of Frank M. Davis against Adams County, as appears on the records of said court in my office.

56 In testimony whereof I hereunto affix my seal of office this 4th day of May, 1867.

[SEAL.]

JACOB BUTLER, *Clerk,*
By T. J. HENDERSON,
Deputy.

STATE OF IOWA,
Adams County:

I, James Widner, clerk of the district court in and for said county, do hereby certify the above to be a true copy of the transcript of the judg-

ment in the cause of Frank M. Davis against Adams County, as appears from the transcript on file in my office.

In testimony whereof I hereunto affix my seal of office this 27th day of April, A. D. 1869.

{ DISTRICT COURT SEAL, ADAMS COUNTY. }

JAMES WIDNER,
Clerk District Court.

57 Copy of general execution.

STATE OF IOWA,
Page County, ss:

FRANK M. DAVIS
vs.
ADAMS COUNTY, IOWA.

The State of Iowa to the sheriff of Adams County, greeting:

Whereas, at the March term, 1867, of the district court of said county, on the 23d day of March, 1867, at the town of Clarinda therein in a certain cause, wherein Frank M. Davis was plaintiff, and Adams County was defendant, judgment for the sum of twenty-two hundred (2,200.00) dollars principal, and one hundred and four & 40/100 dollars costs of suit was rendered against Adams County, Iowa, and in favor of said plaintiff, and it appearing from the records of said court that there is still due on said judgment the sum of twenty-two hundred (2,200.00) dollars and interest at the rate of six per cent. from date of judgment: Now, therefore, you are hereby commanded that of the property, goods and
58 chattels, and for the want thereof, the lands and tenements of said Adams County, Iowa, subject to execution, you cause to be made the sum of twenty-two hundred (2,200.00) dollars, together with interest thereon at the rate of 6 per cent. per annum, from the 23 day of March, 1867, until paid; also one hundred & four & 40/100 dollars costs of suit, and all cost accruing thereon, and make due return thereof to our said district court within seventy days from the date of this writ.

Witness Jacob Butler, clerk of the said court of said county with the seal hereto affixed at Clarinda, this 28th day of December, A. D. 1868.

{ DISTRICT COURT, THE SEAL, PAGE COUNTY, IOWA. }

J. BUTLER,
Clerk of said Court.
By T. J. HENDERSON.

(Endorsed as follows:)

Judgment docket page 221: Damages, $2,200.00; county costs, $104.40 this writ, .50. Interest from March 23, '67.

59 I, S. H. Bugbee, county auditor and clerk of the board of supervisors of Adams County, Iowa, do hereby certify that the foregoing is a true and complete copy of the general execution *execution* issued out of the clerk's office of the district court of Page County, Iowa, on December 28th, 1868, and directed to the sheriff of Adams County, Iowa, and now on file in my office, and as the same was issued in proof of the above claim.

Witness my hand and seal this 27th day of April, 1869.

{ SEAL OF THE BOARD OF SUPERVISORS ADAMS COUNTY, IOWA. }

(Signed) S. H. BUGBEE,
Auditor Adams County, Iowa.

EXHIBIT E.

Costs, attorney fees, witness fees, &c, case of F. M. Davis *vs.* Adams County, paid by Adams County.

June 5th, 1866.	Court costs	(was No. 205; rec., p. 45)		$10 00
Sept. 10th, 1866.	" "	(No. 242)		$25 00
Jan. 7, 1868.	" "	(rec., p. 100)		$40 00
" "	Att'y fee C. E. M.	" " "		$100 00
Sept. 7, 1868.	Witness fee & milage	" " 138		$6 00
Jan. 5, 1869.	" " "	" " 164		$7 00
60 Jan. 6, 1869.	Clerk fee	(rec., p. 166)		$13 65
" " "	By warrants to F. M. Davis, sup. record, page 166			$2,456 60
Jan. 7, 1869.	Warrant to R. Hunter, trip to Des Moines, sup. rec. p. 172			$20 00
Total				$2,678 25

I, S. H. Bugbee, county auditor and clerk of the board of supervisors of Adams County, Iowa, hereby certify that the foregoing is a true and correct statement of the court costs, witness fees, attorney fees, and judgment paid by Adams County, in the cause entitled Frank M. Davis vs. Adams County, Iowa, as shown by the records in my office.

Witness my hand & seal this 27 day of April, 1869.

{ SEAL OF THE BOARD OF SUPERVISORS, ADAMS COUNTY, IOWA. } (Signed) S. H. BUGBEE,
County Auditor, Adams County, Iowa.

61 *Copy of judgment of Supreme Court.*

At a supreme court for the State of Iowa, begun and held at the capitol, in the city of Des Moines, Monday, Dec. 7th, 1868.

Present, the Hon. John F. Dillon, C. J.
" Chester C. Cole,
" George G. Wright, } Judges.
" Joseph M. Beck,

When the following among other proceedings were had & done, to wit:

EXHIBIT F.

TUESDAY, *Dec. 15th*, 1868.

FRANK M. DAVIS *vs.* ADAMS COUNTY, APPEL. } No. 3134.

Appeal from Page County.

Now at this time it being the 15th day of December, A. D. 1868, and the 2nd day of the term allotted to the 3rd judicial district, the above cause coming up on the motion of defendant to reinstate upon the docket for trial, and the court being fully advised in the premises overrule said motion, and further order that the order, made at the June term of this court, allowing defendant to show cause for reinstatement, be, and
62 it is hereby, discharged, and the appeal herein is dismissed as by the June order of this court.

It is further ordered by the court that the plaintiff have and recover off and from the defendant the costs of this appeal taxed at $15.25, and that he have therefor execution.

I, C. Linderman, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a full, true, and complete copy of the final order of said court in the case of Frank M. Davis vs. Adams County, as full, true, and complete as the same appears on the records of said court in my office. In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 24th day of December, A. D. 1868.

Fees, $1.00.

{SEAL OF THE SUPREME COURT OF IOWA.} (Signed) C. LINDERMAN, *Clerk.*

I, S. H. Bugbee, county auditor and clerk of the board of supervisors of Adams County, Iowa, do hereby certify that the foregoing is a true and complete copy of the judgment of the supreme court of Iowa
63 in the cause therein named and of the certificate thereto, as the same appears in the records of this office and as the same was used in proof of the said claim of 16\frac{25}{100}$ before said board.

Witness my hand and seal this 27 day of April, 1869.

{SEAL OF THE BOARD OF SUPERVISORS, ADAMS COUNTY, IOWA.} (Signed) S. H. BIGBEE, *Auditor Adams County, Iowa.*

At a special session of the board of supervisors of Adams County, Iowa, called in pursuance of law, and held at the court-house in Quincy in said county, April 21st, 1869, the following among other business was had and done, to wit 2nd day, April 22nd, 1869.

Present, H. G. Ankeny, chairman; supervisors J. T. Mercer, Samuel Larimer, J. M. Bixler, J. Peregimes, W. D. Thompson, Jesse Ome, John Neill, and J. M. Chaffou.

Absent, R. Hunter, supervisor.

EXHIBIT G.

64 Whereas the board of supervisors of Adams County, Iowa, did on the 3d of September, A. D. 1862, enter into a contract with the American Emigrant Company, which contract was submitted for the approval of the people at the October election A. D. 1862 and ratified; which contract is recorded in the journal of proceedings of that board on pages 129, 130, 131; which contract was to dispose to said American Emigrant Company all swamp lands & funds owned or held by said county amounting at that date to the cash value of over fifteen thousand dollars, for the trivial sum of two thousand dollars, upon conditions herein specified;

And whereas it was falsely represented to the board of supervisors at the date of entering into said contract, and to the people of the county prior to and at the date of the October election aforesaid, that the indemnity funds & lands included in the contract would not & could not be recovered, and that the county was only selling two thousand
65 acres of land at one dollar per acre, to be drained, settled, and improved by intelligent emigrants sent into the county to improve and build up the county, all of which has failed and proved false, which false representations were relied upon by the board of supervisors and people in making said contract;

And whereas the board of supervisors of said county did on the 7th day of September, A. D. 1864, pass a resolution extending rights conferred in said contract by resolutions recorded in the journal of proceedings of that date on page 178;

And whereas by the terms of said contracts the said emigrant company assumed the costs of drainage & improvement of the swamp land;

And whereas the said emigrant company have utterly failed to perform all the stipulations of their part of this contract, important in the said contract to Adams County, whereby the benefit of said contract became and is wholly void, useless, and valueless to said county, thereby wholly defeating and destroying every advantage which said
66 county reasonably expected to derive from said contract:

1st. In refusing and neglecting to drain the lands and put them into cultivation as contracted.

2nd. In suffering the county to remain liable for such drainage in violation of the contract.

3rd. In failing to send settlers into the county as contracted, thereby delaying and retarding the settlement & improvement of the county.

4th. In refusing to comply with the reasonable and just demands of the board of supervisors as contracted.

5th. In causing and suffering the county to have the case and costs of vexatious and expensive litigation concerning just claims against said lands and funds in violation of the contract.

6th. In refusing to reanumerate the county for actual costs expanded and attorney fees in litigation carried on & at their request and for their benefit in the name of the county;

7th. In refusing to respect the claims of F. M. Davis in violation of the contract to do so, whereby the county has been compelled to
67 pay twenty-seven hundred dollars in judgment, costs, and attorney fees, for reason of their failures, being seven hundred dollars more than the entire amount of the original contract, refunded to their account, which they now refuse to pay although often demanded and a reasonable time allowed for performance;

And whereas the board of supervisors final'y believe the said contract was procured on the part of the American Emigrant Company through fraud, misrepresentation, and concealment of facts then in their knowledge, of which the then board of supervisors and people were ignorant;

And whereas the said emigrant company has been notified and requested to respect the rights of claimants and regard the interest of the county in such contract, payments demanded, performance requested, all of which have been refused and neglected, and the said company have realized large sums of money out of said contract, which they
68 represented at time of contract to be utterly lost and beyond all hope of recovery, and persist in holding said money and refusing to pay just claims against such funds, and by such neglect destroying every advantage derived by said contract to the county, and persist to claim all the benefits of such wrongful contract and regard none of its obligations:

Now, therefore, be it resolved by the board of supervisors of Adams County, Iowa, in the name and for the use of said county, and the people thereof, that the said contract and extension and all other resolutions or contract conferring power or rights upon said American Emigrant Company be, and are hereby, declared rescinded, null, and void, and of no binding force in law, equity, or morals upon said county, and the said county hereby declares her election to rescind all acts heretofore done, and contracts heretofore made, and placeth parties in original positions, as if said contract never had been made.

69 And we do hereby refuse to go any farther in the performance of said contract to make deeds of land, or do any other acts toward completing said contract or any part thereof.

And we do hereby appoint Frank M. Davis as our attorney and agent to bring suits to recover all indemnity, money, land, and rights whatever conferred, transmitted to, or obtained by said American Emigrant Company under or by virtue of said contract, and to recover all rights of costs and attorney fees expended by the county in adhereing to and supporting said emigrant company in actions heretofore pending; to rescind and cancel deeds, contracts, powers of attorney, and all other writings giving said American Emigrant Company any rights to lands, funds, or scrip, that the county may be placed as if said contracts never were made, as near as possible.

I, S. H. Bugbee, county auditor and clerk of the board of supervisors of Adams County, Iowa, do hereby certify that the foregoing is a
70 correct and complete copy of the record of the proceedings of said board in reference to the matters therein mentioned, and a true and complete copy of the preambles and resolution adopted on said day by said board in reference to the matters therein mentioned.

Witness my hand and the seal of said county this 27th day of April, 1869.

SEAL OF THE BOARD OF SUPERVISORS ADAMS COUNTY, IOWA.

(Signed) S. H. BUGBEE,
Auditor Adams County, Iowa.

EXHIBIT H.

List of swamp lands patented to Adams County.—Transfer of swamp lands from Adams County.

Description.	Sec.	Town.	R.	Acres.	Date of proof.	Claimant's name.	Owner's name.	Kind of ins't.	Date of instr'm't.	
N. W. ¼ N. E. ¼	2	71	34	40			Am. Em. Co.			
N. ½ S. W. ¼	8	"	"	80	July 2, 1855	H. Freshow	D. H. Burton	Bond	Nov. 7, 1862	
N. E. ¼ N. W	18	"	"	40			Am. Em. Co.			
N. W. N. E	"	"	"	"		J. W. Morris				
N. ½ N. E	6	72	34	80			H. W. King	Deed		P'd in full.
S. W. N. E	"	"	"	40			H. W. King	Deed		P'd in full.
E. ½ S. E	30	"	"	"			E. M. Davis	"		
S. ½ N. W	36	72	34	80			Am. Em. Co.			
N. E. N. W	"	"	"	40	Nov. 5, 1855	C V. Marshall	C. V. Marshall	Bond	Nov. 8, 1862	P'd in full Oct. 29, 1862.
N. E. N. E	"	"	"	40	Aug. 23	Sam. Larimer	John McKinney	Deed		
N. W. N. E	"	"	"	"	" "	" "	" "	"		
S. E. N. E	"	"	"	"	" "	" "	" "	"		
S. W. N. E	"	"	"	"	" "	" "	" "	"		
E. ½ N. E	12	73	34	80			F. M. Thompson	Deed		Paid in full Oct. 15, 1862.
N. E. S. E	"	"	"	40			John Morton	Bond	March 10, 1868	P'd.
S. E. S. E	"	"	"	"			Am. Em. Co.			
S. E. S. W	14	"	"	"	Sept. 24, 1855	Jacob Horadr, L. Pickett	" " "	"		
N. W. S. E	"	"	"	"			R. Mansfield	Bond		
N. E. N. E	"	"	"	"			John Morton	"	Ma'ch 10, 1862	P'd.
S. E. N. W	22	"	"	"	Dec. 3, 1855	B. Strait	J. Alexander	Bond	March 15, 1862	P'd.
N. W. S. E	"	"	"	"	" " "	" "	" "	"	" " "	
N. ½ N. E	28	"	"	80	Dec. 3, 1855	D. J. Peterson	Am. Em. Co.			
S. ½ N. E	"	"	"	"	Dec. 3, 1855	W. C. Morton	C. Horadr	Bond	Nov. 15, 1862	P.
N. W. N. W	32	"	"	40			Am. Em. Co.			
72 N. E. S. E	10	71	35	40			Am. Em. Co.			
N. W. S. E	"	"	"	"			" " "			
S. E. S. E	"	"	"	"			" " "			
S. W. S. E0	"	"	"	"			" " "			
S. E. N. E	"	"	"	"			" " "			
S. W. N. W	12	"	"	"			" " "			
N. W. N. E	"	"	"	"			J. N. Arthur			
N. W. S. W	20	"	"	"	Dec. 15, 1855	F. M. Davis	F. M. Davis	Deed	Nov. 7, 1862	
S. E. S. W	"	"	"	"			Am. Em. Co.			
W. ½ N. W	"	"	"	80	Dec. 15, 1855	F. M. Davis	F. M. Davis	Deed	Nov. 7, 1862	
E. ½ S. W	30	"	"	80			Am. Em. Co.			
N. W. S. E	"	"	"	40			" " "			
S. E. N. W	"	"	"	"			" " "			
W. ½ N. E	"	"	"	80			" " "			
N. W. N. W	12	72	35	40	Apr. 25, 1855	J. P. Osborne	E. Walters			Personal note.

Description.	Sec.	Town.	R.	Acres.	Date of proof.	Claimant's name.	Owner's name.	Kind of ins't.	Date of instr'm't.	
N. E. N. W	12	72	35	40			E. Walters	Deed		
S. W. N. W	"	"	"	"	Apr. 25, 1855	J. P. Osborne	E. Walters			Personal note.
S. E. N. W	"	"	"	"			" "	Deed		
W. ½ S. W	"	"	"	80	Sep. 8, 1855	Hattan Ulm	Delin Shepherd	Bond	Dec. 9, 1861	
S. W. N. W	14	"	"	40	Sep. 24, 1855	John Barnett	John Barnett	"	Dec., 1861	
N. ½ S. E	30	"	"	80			Am. Em. Co.			
S. ½ S. E	"	"	"	"			" " "			
S. ½ S. W	"	"	"	"			" " "			
E. ½ S. W	30	"	"	"			" " "			
N. ½ N. E	"	"	"	"			" " "			
S. E. N. E	"	"	"	40			" " "			
S. W. N. E	"	"	"	40			A. M. M.			
73 N. E. N. W	30	72	35	40			Am. Em. Co.			
N. W. N. W	"	"	"	"			" " "			
S. E. N. W	"	"	"	"			" " "			
S. W. N. W	"	"	"	"			" " "			
N. E. S. E	"	"	"	"			" " "			
N. W. S. E	"	"	"	"			" " "			
S. W. S. E	"	"	"	"			" " "			
S. E. S. W	8	72	32	40			Am. Em. Co.			
N. E. S. E	"	"	"	"			" " "			
N. W. S. E	"	"	"	"	July 6, 1857	J. C. Whipple	" " "			
N. E. N. E	18	"	"	"			" " "			
N. W. N. W	"	"	"	"	July 6, 1857	J. C. Whipple	" " "			
N. E. N. W	"	"	"	"	" " "	" " "	Joseph Whipple	Deed	July 7, 1862	Paid in full March —, 1862.
S. E. N. W	"	"	"	"			Am. Em. Co.			
N. E. N. W	28	72	33	40			Am. Em. Co.			
S. E. N. W	"	"	"	"	Jan. 83, 1856	Joseph Labeme	J. B. Gelord	Bond	Nov. 23, 1861	
S. E. S. W	30	"	"	"			" " "	"		
N. E. N. W	"	"	"	"			Am. Em. Co.			
N. W. N. W	"	"	"	"	May 4, 1857	L. A. Olmstead	F. M. Davis	Deed	March 8, 1862	
N. W. N. E	"	"	"	"		Joseph Bramer	W'm Kressenger	Bond	March 8, 1862	
N. E. S. E	"	"	"	"			J. B. Gelord	"	Nov. 23, 1861	
N. W. S. E	"	"	"	"			" " "	"	" " "	
74 S. E. S. W	6	73	33	40	Nov. 11, 1856	John W. Miller	F. M. Davis	Deed	Mar. 7, 1862	
S. W. S. W	"	"	"	"	" " "	" " "	" " "	"	" " "	
S. W. N. E	"	"	"	"			Am. Em. Co.			
N. E. N. E	"	"	"	"			" " "			

I, S. Bugbee, county auditor and clerk of the board of supervisors of Adams County, Iowa, do hereby certify that the foregoing is a true and complete copy of the swamp land record of said county, as appears by the record in my office, as showing the description of lands patented to Adams County prior to the 3rd day of September, 1863, and showing the transfers of said lands by said county.

Witness my hand and seal this 27th day of April, 1869.

[SEAL OF THE BOARD OF SUPERVISORS, ADAMS COUNTY, IOWA.]

S. H. BUGBEE,
Auditor Adams County, Iowa.

75 EXHIBIT I.

The following is a list of lands patented from the State of Iowa to Adams County for swamp lands sold by United States in Adams County, Iowa, the legal title of which is now in Adams County:

Parts of section.	Sec.	T.	R.	Acres.	Date of patent.
S. W. ¼	18	83	41		23 Sept. 1865.
W. ½, S. W. ¼	31	"	"	211 $\frac{84}{100}$	" " "
N. ½, N. E. ¼	6	83	42		" " "
N. ½, N. W. ¼ & N. ½, E. ¼	10	"	"		" " "
W. ½, S. W	32	"	"	388 $\frac{40}{100}$	" " "
N. ½, N. W	2	82	43		" " "
S. W. ¼, S. W. ¼	8	"	"		" " "
N. W. ¼, N. E. ¼	14	"	"		" " "
S. W. ¼, N. W. ¼	30	"	"	207 $\frac{13}{100}$	" " "
S. E. ¼, S. W. ¼	18	88	32		Nov. 29, 1867.
N. W. ¼	28	"	"	200	" " "
Total				947 $\frac{13}{100}$	

STATE OF IOWA,
Adams County, ss:

I, S. H. Bugbee, acting county auditor and clerk of the board of supervisors in & for said county and State, hereby certify that the foregoing is a correct list of lands patented to Adams County by the State of Iowa as the indemnity for swamp lands sold, as the same appears by the records and files now in my office.

Witness my hand and the seal of the board of supervisors this 27 April, 1869.

S. H. BUGBEE,
Auditor Adams County, Iowa.

76 EXHIBIT K.

The following is a list of lands in Adams County, Iowa, selected as swamp, for which indemnity has been granted by the United States to the State of Iowa, in—

Parts of section.	Sec.	T.	R.	Acres.
N. W. ¼ N. W. ¼	9	71	34	40
S. E. ¼ S. W. & S. W. ¼ S. W. ¼	6	72	34	108.70
N. ½ S. W. ¼	36	"	"	80
S. W. ¼ S. E.	14	73	34	40
E. ½ N. E. ¼	22	"	"	80
N. W. ¼ N. E. ¼	11	71	35	40
N. E. ¼ S. E. ¼	12	"	"	40
N. E. ¼ N. W. ¼ & S. E. ¼ N. W. ¼	31	"	"	80
S. W. ¼ N. E. ¼ & N. W. ¼ N. E. ¼	"	"	"	80
N. E. ¼ N. E. ¼	12	72	35	40
N. E. ¼ N. E. ¼	14	"	"	40
S. W. ¼ S. E. & N. W. ¼ S. E. ¼	21	72	35	80
W. ½ S. E. ¼ & N. E. ¼ S. W. ¼	33	73	32	120
N. W. ¼ S. E. ¼	23	72	33	40
S. E. ¼ N. W ¼	26	"	"	40
N. W. ¼ N. W. ¼	28	"	"	40
Total				988.70

77 EXHIBIT G.

The following is a schedule of lands lying in odd numbered sections in Adams County, Iowa, which have been deeded or patented to said county by the State of Iowa as inuring to said county as swamp land since the 14th of Sep., 1863, and of which the legal title still remains in Adams County.

Part of section.	Sec.	T.	R.	Acre.	Date of patent.
N. W. ¼ N. W. ¼	17	72	32	40	18 Nov., 1867.
S. W. ¼ N. E. ¼	33	73	32	40	" " "
S. E ¼ N. E. ¼ & N. W. ¼ S. E. ¼	13	72	33	160	" " "
N. E. ¼ S. W. ¼ & S. W. ¼ S. W. ¼					
S. W. ¼ S. W.	27	"	"	40	" " "
E. ½ N. E. ¼ & N. E. ¼ S. E. ¼	23	"	"	120	" " "
S. W. ¼ N. E. ¼	27	"	"	40	" " "
S. ½ N. E. ¼ & S. ½ N. W. ¼	29	"	"	160	" " "
N. W. ¼ N. W. ¼	31	"	"	$50\frac{39}{100}$	
N. E. ¼ N. W. ¼ & W. ½ N. W. ¼	7	73	33	$248\frac{53}{100}$	" " "
W. ½ S. W. ¼ & N. E. ¼ S. E. ¼					
R. E. ¼ S. E. ¼	11	73	34	40	9th April, 169.
Total				$978\frac{87}{100}$	

STATE OF IOWA,
Adams County:

I, S. H. Bugbee, auditor of & clerk of the board of supervisors of Adams County, Iowa, hereby certify that the foregoing is a cor-
78 rect list of lands patented by the State of Iowa to Adams County

as swamp lands the 14th of September, A. D. 1863, as the same appears by patents now on file in my office.

Witness my hand and the seal of said county this 27 day of April, A. D. 1869.

[SEAL OF THE BOARD OF SUPERVISORS, ADAMS COUNTY, IOWA.]

S. H. BUGBEE,
County Auditor Adams County, Iowa.

STATE OF IOWA,
Polk County, ss:

I, J. Widner, clerk of the district court of Adams County, Iowa, do hereby certify that the foregoing is a full and complete copy of plaintiff's petition in the above-entitled cause of action as fully as the same remains on file and of record in my office.

In testimony whereof I hereunto set my hand and affixed the seal of said court at Quincy, Adams County, Iowa, this 8th day of November, 1869.

[SEAL.]

JAMES WIDNER,
Clerk Dist. Court, Adams Co., Iowa.

79 In dist. court, Adams Co., Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. . Chancery.

And afterwards, to wit, on the 10th day of May, 1869, plaintiff filed in the office of the clerk of the district court of said county herein its original notice & return thereon in counsel in the words & figures following, to wit:

B.

Original notice.

To the American Emigrant Company:

You are hereby notified that on Thursday, the 29th day of April, A. D. 1869, there will be on file in the clerk's office of the district court of Adams County, Iowa, the petition in equity of Adams County, plaintiff, claiming a decree against you as defendant, rescinding and cancelling certain contracts for the sale of swamp land, swamp land funds
80 & rights, the rescinding and cancellation of a deed of conveyance made from plaintiff to you the 7th September, A. D. 1863, recorded in book E, page 539 to 542, Adams Co., deed records, the releasing of plaintiff from all liability to convey lands under said contracts and a restoration to said plaintiff of all moneys, lands and rights whatever as if the said contracts and deeds had never been made, a decree for there possession of lands, quieting titles, also a decree for money held by you under said contract, and damages for breach of contract and verndor's lien upon land described in said petition. For full particulars see petition on file.

Now, unless you appear and defend before noon of the second day of the term of the next district court of Adams County, Iowa, to be begun and held at Quincy, in said County, on Monday, the 10th day of May,

A. D. 1869, your default will be entered and decree rendered as prayed for, with costs.

ADAMS COUNTY.
By FRANK M. DAVIS.
CUMMINS & WILLIS, *Att'y.*

81 QUINCY, ADAMS COUNTY, IOWA,
April 27, 1869.

The within notice came to my hands April 27, 1869, A. D., and I served the same on John Bixby, on the 28th day of said month, by reading the same to him and delivering him a copy of the same in Quincy, Adams County, Iowa, he being the agent of the American Emigrant Company for this county.

W'M BIXBY.
Sheriff of Adams County, Iowa.

Sheriff: service, 50; copy, 20=70.

STATE OF IOWA,
Adams County, ss:

I, James Widner, clerk of the district court Adams County, Iowa, do hereby certify that the foregoing is a full & complete copy of the original notice, with return thereon indorsed in the above-entitled cause, as fully as the same now appears on file & of record in my office; said notice was filed on the 10th day of May, A. D. 1869.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 8th day of November, A. D. 1869, at
82 Quincy, Adams County, Iowa.

[SEAL.] (Signed) JAMES WIDNER,
Clerk Dist. Court, Adams Co., Iowa.

In dist. court Adams Co., Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 153. Equity.

And afterwards, to wit, on the 11th day of May, 1869, the affidavit of J. Bixby, esq., was filed in the above-entitled cause in the office of the district court of Adams County, Iowa, which said affidavit is in words & figures following, to wit:

C.

STATE OF IOWA,
Adams County, ss:

I, John Bixby, do on oath state that as I am informed & believe & as the sheriff of said county has advised me, the only service of notice in the case of Adams County against the American Emigrant Com-
83 pany made upon any one in said case is service of such notice upon me made on the 28th day of April, 1869.

I further state I am not, and have not professed, & do not profess to be an agent of said company engaged in the active management of the ordinary business of said company, but that, on the other hand, I am engaged in business upon my own account as an attorney at law & real estate agent at Quincy, Adams County, Iowa, and that as such land

agent I have the privilege, by arrangement with said company, of negotiating sales of the lands of said company, in Adams County, but have no authority to make any contract for, or in the name of said company, or to bind said company by word or by deed; but to receive any offer I may have for any of its land in Adams County for sale, report the same to the said company, who then, by its general superintendant, if satisfied to sell at the offer, sends its written contract for the
84 sale to me for delivery, & to receive & transmit any payment made. My power or agency is much more limited for said company than for many private individuals whose lands I hold as such agent to sell, and such limited business as I do for such company occupies but an inconsiderable part of my time.

I further state that the matters alleged as the cause of action in the petition are not matters growing out of, or connected with my office or agency, for said American Emigrant Company, nor for, or concerning any acts of mine for, or on account of said company.

And I further state that I so informed the sheriff when he served said notice on me, that I was not an agent of said company, only in such limited sense as I have herein stated.

JOHN BIXBY.

Sworn to, & subscribed before me this 10th day of May, 1869.
[L. S.] J. WIDNER, *Clerk.*

STATE OF IOWA,
Adams County, ss:

85 I, James Widner, clerk of the district court of Adams County, Iowa, do hereby certify that the foregoing is a full & complete copy of the affidavit filed in the above entitled cause, May 11th, 1869, as fully as the same now appears on file & of record in the above entitled cause in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 8th day of November, A. D. 1869, at Quincy, Adams County, Iowa.

[SEAL.]
JAMES WIDNER,
Clerk Dist. Court, Adams Co., Iowa.

In district court of Adams County, Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 153. Ch'y.

And afterwards, to wit, on the 11th day of May, 1869, being the second day of the May term, 1869, the following proceedings were had in the above entitled cause, to wit.

86 D.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 153. Equity.

Now comes John Bixby, and files his statements and affidavit setting out the extent of his powers as agent of the said defendant, whereupon the court being fully advised in the premises, it is ordered that this cause be continued for service.

(Signed at the close of the day's proceedings).

JAMES G. DAY, *Judge.*

County, Iowa; that the original notice in the case of Adams County vs. The American Emigrant Company, a true copy of which is hereto attached and made part hereof, was published four consecutive weeks in said paper, the first publication being on the 15th of July, and the last publication on the 5th of August, A. D. 1869, all to my personal knowledge, affiant having charge of the work of publishing said paper, the fees for publication fees being—

WILLIAM WILKINS.

93 Subscribed & sworn to before me August 10th, 1869.
[L. S.] A. D. WELLS,
Notary Public.

(Copy of printed notice.)

Original notice.

To the American Emigrant Company:

You are hereby notified that there is now on file in the clerk's office of the district court of Adams County, Iowa, the petition in equity of Adams County, plaintiff, claiming a decree against you as defendant, rescinding & cancelling certain contracts for the sale of swamp lands, swamp-land funds & rights, the rescinding & cancellation of a deed of conveyance made from plaintiff to you the 7th day of September, A. D. 1863, recorded in Book E, page 539 to 542, Adams County deed-records, the releasing of plaintiff from all liability to convey lands under said contracts, and a restoration to said plaintiff of all moneys, lands, & rights whatever, as if said contracts and deeds had never made, a
94 decree for the possession of lands, quieting titles; also a decree for money held by you under said contract, and damages for breach of contract and vendor's lien, described in said petition. For full particulars see petition on file.

Now, unless you appear and defend before noon of the second day of the term of the next district court of Adams County, Iowa, to be begun & held in Quincy, in said county, on Monday, the 8th day of November, A. D. 1869, your default will be entered, and decree rendered as prayed for, with costs.

F. M. DAVIS,
A. L. WELLS,
J. P. CUMMINS,
Attorneys.

STATE OF IOWA,
Adams County, ss:

I, J. Widner, clerk of the district court of Adams County, Iowa, do hereby certify that the foregoing is a full & complete copy of the affidavit of proof of publication of an original notice, a copy of which is
95 attached to said affidavit, as fully as the same now appears on file & of record in my office in the above-entitled cause. Said affidavit was filed August 10th, 1869, therein.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 8th day of November, 1869, at Quincy, Adams County, Iowa.

[SEAL.] JAMES WIDNER,
Clerk Dist. Court, Adams Co., Iowa.

In district court, Adams Co., Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 153. Equity.

And afterwards, on the 8th day of November, 1869, the defendant filed herein its petition, duly sworn to, in words & figures following, to wit:

G.

In the district court of Adams Co., Iowa.

ADAMS COUNTY, PL'FF,
against
THE AMERICAN EMIGRANT COMPANY, DEF'T. } Petition for charge of

To the district court of the State of Iowa, within & for the county of Adams:

96 Your petitioner, the American Emigrant Company, respectfully states to the court that an action has been brought and is now pending in the district court aforesaid by said Adams Co., as pl'ff, against your petitioner; that said pl'ff is a citizen of the State of Iowa, and your petitioner, the American Emigrant Company, is a citizen of the State of Connecticut, incorporated by that name by said State of Connecticut, & having their principal place of business there; that your petitioner has never been incorporated under the laws of the State of Iowa; that the matters in dispute in said action exceed the sum of five hundred dollars, the damages claimed by pl'ff being laid at $3,000.00 & more; that special bail was not originally required in said action. Petitioner further states that from prejudice and local influence petitioner herein will not be able to obtain justice in said court.

Your petitioner therefore asks for the removal of said cause for trial into the next circuit court of the United States to be held in the
97 district of Iowa, and your petitioner here now offers good & sufficient surety for the entry in such court, on the first day of its next session, copies of all process, pleadings, depositions, and other proceedings in said suit.

THE AMERICAN EMIGRANT COMPANY,
By SIBLY & HARBERT,
Its Solicitors.

STATE OF IOWA,
Polk County, ss:

I, James C. Savery, do, on oath, state I am general superintendent & managing agent of the American Emigrant Company mentioned in the foregoing petition; that I have heard said petition read, & know the contents thereof, & that the allegations therein are true, as I verily believe.

(S'g'd) J. C. SAVERY.

Subscribed & sworn to by said J. C. Savery, before me, this 23*d* day of October, 1869.

[L. S.]

W. S. HARBERT,
Notary Public, Polk County, Iowa.

98 STATE OF IOWA,
Adams County, ss:

I, J. Widner, clerk of the district court of Adams County, Iowa, do hereby certify the foregoing is a full & complete copy of the petition of defendant filed herein November 8th, 1869, as fully as the same now appears on file & of record in my office in the above-entitled cause.

In testimony whereof I have hereunto set my hand & affixed the seal of said court this 8th day of November, A. D. 1869, at Quincy, Adams County, Iowa.

[SEAL.]

JAMES WIDNER,
Clerk Dist. Court, Adams Co., Iowa.

In district court of Adams Co., Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 153. Ch'y.

And afterwards, to wit, on the same day, November 8th, 1869, defendant filed its bond in the above-entitled cause, which bond, with indorsement of approval thereon, and in words & figures following, to wit:

99 H.

Bond.

In the district court, Adams County, Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY.

Know all men by these presents, that the American Emigrant Company, as principal, & and James C. Savery & B. F. Allen, as surities, are held and firmly bound unto the above-named Adams County in the penal sum of five hundred dollars, for the payment of which, well & truly to be made, we bind ourselves & legal representatives firmly by these presents. Dated this 23*t*d day of October, 1869.

Whereas the above-named Adams County, as pl'ff, has commenced an action in the district court of Iowa, within & for the county of Adams, against the above-bounden the American Emigrant Company, as defendant; and whereas said defendant intends to file a petition for the removal of said cause for trial into the next circuit court
100 of the United States to be held in the district of Iowa:

Now, if the said the American Emigrant Company shall, on the 1st day of the next session of the circuit court to be held in the district of Iowa, enter in said court copies of all process, pleadings, depositions, testimony, & other proceedings in said suit, then the above obligation to be void; otherwise to remain in full force & virtue.

(Signed) THE AMERICAN EMIGRANT COMPANY.
By SIBLY & HARBERT,
Its Att'ys.

J. C. SAVERY, B. F. ALLEN.

STATE OF IOWA,
Polk County, ss:

I, James C. Savery, do on oath state I am a resident of Polk County, Iowa, & am worth five hundred dollars exclusive of property exempt from execution.

(S'g'd) J. C. SAVERY.

Subscribed & sworn to by said J. C. Savery, before me, this 23
101 day of October, 1869, at Des Moines, Polk County, Iowa.

[L. S.] W. S. HARBERT,
Notary Public, Polk County, Iowa.

STATE OF IOWA,
Adams County, ss:

I, J. Widner, clerk of the district court of Adams County, Iowa, do hereby certify that the foregoing is a full & complete copy of the bond filed in my office November 8th, 1869, in the above entitled action, as full & complete as the same now appears on file therein & of record in my office.

In testimony whereof, I have hereunto set my hand & affixed the seal of said court at Quincy, Adams County, Iowa, this 8th day of November, 1869.

[SEAL.] JAMES WIDNER,
Clerk District Court, Adams Co., Iowa.

In the district court of Adams Co., Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 153. Equity.

102 And afterwards, to wit, on the same day, November 8th, 1869, being the first day of the November, 1869, term of said court, the following proceedings were had herein, to wit:

K.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. Chancery.

And now on this 8th day of November, 1869, being the first day of this November term, 1869, of this court, this cause coming on for hearing upon the petition of the defendant, the American Emigrant Company, for the removal of this cause for trial from this court into the next circuit court of the United States to be held in the district of Iowa, & it appearing to the court that def't has filed its petition herein, duly sworn to, in which it is averred that plaintiff is a resident of the State of Iowa, that defendant is a resident of the State of Connecticut & has never been a resident of the State of Iowa, that the matter in dispute
103 exceeds the sum of five hundred dollars exclusive of costs, that special bail was not originally required in this action, that defendant from prejudice & local influence will not be able to obtain justice in this court.

It further appearing to this court that said defendant has offered to file & has filed herein good & sufficient surety in the sum of $500.00 for

entering in the U. S. circuit court for the district of Iowa on the first day of its next session copies of all process, pleadings, testimony, & other proceedings in said court. The courts finds the allegations of said petition to be true & that each & every of the matters & things requisite & necessary to be done in & about such application for removal have been done in manner & form as required by the statutes of the United States in such cases made & provided. It is therefore ordered, & decreed, that this cause be and the same is hereby discontinued in & dismissed from this court; that the p'ayer of said petition be & the same is hereby granted; that the clerk of this court forthwith
104 prepare a complete transcript of all process, pleadings, depositions, testimony & other proceedings in this case, & transmit the same to the circuit court of the U. S. for the district of Iowa, together with a bill of accused & accusing costs therein in this court.

Approved. JAMES G. DAY,
Judge 3td District.

(Signed at close of the day's proceedings.)
JAMES G. DAY, *Judge.*

STATE OF IOWA,
Adams County, ss:

I, J. Widner, clerk of the district court of Adams County, Iowa, do hereby certify that the above is a complete copy of the only proceeding here in the above entitled cause at the November, 1869, term of said court, & that the foregoing is a complete copy of the only journal entry in said cause at said term.

In testimony whereof, I have hereunto set my hand & affixed the seal of said court, this 8th day of November, 1869, at Quincy, Adams County, Iowa.

[SEAL.] JAMES WIDNER,
Clerk Dist. Court, Adams Co., Iowa.

105 In district court of Adams County, Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 153. Chancery.

STATE OF IOWA,
Adams County, ss:

I, J. Widner, clerk of the district court of Adams County, Iowa, do hereby certify that the foregoing is a full and complete transcript & copy of each & every of the process, pleadings, depositions, testimony & other proceedings in the above entitled cause, & that the foregoing papers marked A, B, C, D, E, F, G, H, K, constitute full and complete copies of all process, pleadings, depositions, testimony, & other proceedings in said cause as full & complete as the same now appears on file & of record in my office therein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court of Adams County, Iowa, this 8th day of November, A. D. 1869, at Adams County, Iowa.

[SEAL.] JAMES WIDNER,
Clerk Dist. Court, Adams Co., Iowa.

106 QUINCY, ADAMS CO., IOWA,
November 8th, 1869.

Rec'd this day $22.30 in full for fees in preparing & certifying the foregoing transcript in this cause from W. G. Harbert, def't's attorney.
J. WIDNER, *Clerk.*

Fee bill.

ADAMS COUNTY, IOWA.
Quincy, Nov. 8th, 1869.

ADAMS COUNTY
vs.
AMER. EM. COM. } No.

Clerk's fees:	
Docket fee	$1 50
Continuance	15
Trial	
Judgment	
Taxing costs	
Executions; satisfaction	
Entering Sheriff's sale	
Publication fee	
Sheriff's fee:	
Serv. one notice	$2 70
Fee	$10 00
	$1 65
	$14 35
Witness fees:	
Copies of papers—pd. by def't	$22 30
	$36 65

107 Received payment.

Clerk D. C.

By , *Deputy*

(Endorsed:) In dist. court, Adams County, Iowa. Adams County vs. The American Emigrant Company. Transcript filed May 10, 1870. George B. Corkhill, clerk.

108 Afterwards, to wit, on the 4th day of July, 1870, said respondent by its said att'ys filed in said clerk's office its demurrer to complainant's bill in said cause, which said demurrer is in words and figures following, to wit:

109 In the circuit court of the United States, district of Iowa.

ADAMS COUNTY
ag't
THE AMERICAN EMIGRANT COMPANY.

Demurrer of the American Emigrant Company, defendant, to the bill of complaint of Adams County, the above-named plaintiff.

The defendant by protestation, not confessing all nor any of the mat-

ters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth that—

1. There is no equity in said bill.
2. Said bill seeks to avoid solemn deeds and contracts in writing on the ground of false and fraudulent representations without setting
110 out the representations alleged to have been false and fraudulent.
3. The representations set out, if false and fraudulent, do not avoid the contracts and deeds set out.
4. The representations complained of relate to rights established & secured by the public statutes of the United States and of the State of Iowa, of which plaintiff had knowledge.
5. The alleged representations were made to the board of supervisors of the plaintiff, but the contracts were submitted to the electors of the plaintiffs, approved by a majority thereof before the same became binding, and there is no allegation that such representations were made to such electors, or that they acted or relied upon the same.
6. The bill seeks to avoid contracts upon ground that the defendants have failed to perform covenants to be performed subsequently to the execution of the contract.
7. The bill seeks to avoid contracts because of defendants to each of the same as to contracts to be performed after they were executed.
111 8. The plaintiff has not by its said bill made or stated such a case as entitles it in a court of equity to any relief against this defendant as to the matters contained in said bill, or any of such matters.

Wherefore defendant prays the judgment of this court whether he ought to be compelled to put in any further or other answer to plaintiff's bill, and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

THE AMERICAN EMIGRANT COMPANY,
By J. C. SAVERY, *Agent.*

We certify that in our opinion the foregoing demurrer is well founded in point of law.

WITHOW & WRIGHT,
Sol's for Def't.

STATE OF IOWA,
Polk County, ss:

James C. Savery, being duly sworn, deposes and says that he is general agent of the defendant in the above-entitled cause, and as such
112 is authorized to make this affidavit, and that the foregoing demurrer is not interposed for delay, but that justice may be done.
(Signed) J. C. SAVERY.

Subscribed by J. C. Savery in my presence and by him sworn to before me July 4th, 1870.
[SEAL.] (S'g'd) W. O. CURTIS,
Notary Public, Polk Co., Iowa.

(Endorsed:) In U. S. circuit court. Adams County vs. The American Emigrant Company. Demurrer to bill. Filed Jul. 4, 1870. George B. Corkhill, clerk. Withrow & Wright for defendant.

113 Afterwards, to wit, on the 28th day of October, the same being of the October term, 1870, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, October term, 1870. Friday, October 28, A. D. 1870.

ADAMS COUNTY
vs.
AMERICAN EMIGRANT COMPANY. } No. 168. Ch'y.

Now, on this day this cause coming on to be heard upon defendant's demurrer to plaintiff's bill, the plaintiff appearing by Davis & Polk, and defendant by Withrow and Wright and Nourse & Kauffman, and the court having heard the argument of counsel and being fully advised in the matter sustains said demurrer. Thereupon leave is granted plaintiff to file a new or substituted bill by January rule day next, and the case is continued.

114 And, afterwards, to wit, on the 29th day of December, 1870, the said complainant, by its said attorney, filed in said clerk's office its amended bill of complaint in said cause, which said amended bill is in the words and figures following, to wit:

In the circuit court of the United States.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. }

To the judges of the circuit court of the United States for the district of Iowa:

Adams County, a municipal corporation, organized under the laws of Iowa, and being a citizen of the State of Iowa, brings this her bill against the American Emigrant Company, a private corporation or copartnership, of the city of Hartford, and a citizen of the State of Connecticut.

Your orator, having been ordered by your honor, upon the sustaining of the demurrer heretofore filed in this cause upon the removal of this cause from the State court, to file a new bill, more nearly com-
115 plying wth the practice in this court, brings this her substituted bill.

And, thereupon, your orator complains and says that, on the 3d day of September, A. D. 1862, your orator was the lawful owner and possessor of two thousand acres of swamp-land, and the equitable owner and actual possessor of about four thousand acres of other swamp-land, all situated in Adams County, Iowa; and, also, your orator was the rightful owner and possessor of certain claims for swamp-land indemnity in cash & scrip, to be paid by the United States, to the actual value of about ten thousand dollars in cash; for which claims your orator had caused indemnity proofs to be filed with the Commissioner of the General Land Office, at Washington, in accordance with law. All of which lands and claims were the rightful property of your orator, under the acts of Congress approved the 28 day of Sept., A. D. 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp-lands within their limits"; and the act of Congress ap-
116 proved March 3*t*d, 1857, entitled "An act to confirm to the several States the swamp & overflowed lands selection, under the act of September twenty-eight, eighteen hundred and fifty, and the act of the second of March, eighteen hundred and forty nine"; and the act of the legislature of Iowa, approved January 13, 1853, entitled "An act to dis-

pose of the swamp and overflowed lands within the State, and to pay the expenses of selecting and surveying the same," and the other public acts of Congress and the legislature of Iowa, and amendatory thereto.

All of which lands and claims were the property of your orator, in trust, for the purpose of draining, building levees, and fitting the lands for cultivation. Your orator says that at the date aforesaid the then acting board of supervisors of your orator, being your orator's agents by law, entered into a written contract with defendants, by their general agent for the State of Iowa, one F. C. D. McKay, a true copy of which is hereto attached, marked "Exhibit A," and made part hereof, the substance of which contract was, that said board of super-
117 visors disposed of the entire interest of your orator in and to all the swamp-lands aforesaid, with all claims for cash and scrip, in security to defendants, for the sum of two thousand dollars, to be paid in building public bridges, or in cash, at the election of said board of supervisors; the said defendant agreeing to pay certain charges against the indemnity proofs previously filed, and to drain, settle, and improve all said swamp-lands with actual settlers; one-third in three years, one-third in five years, and the whole in eight years from the date of canvassing the vote of the people upon said contract, which canvass, your orator charges, was on the 20 of October, A. D. 1862.

Your orator further says that, subsequent to the date of said written contract, and on the seventh day of September, A. D. 1863, the said board of supervisors of your orator, at request of defendants, executed a deed of conveyance, which is found of record in the deed-record books of Adams County, Iowa, in book E, pages 539, 540, 541,
118 & 542, a true copy of which is hereto attached, marked "Exhibit B," and made part hereof, the substance of which deed is to convey three thousand six hundred and eighty and $\frac{51}{100}$ acres of swamp-land, and covenant to convey about eight thousand acres other swamp and indemnity lands, for the sum of two thousand dollars, to be paid, or secured to be paid, by defendants executing a mortgage upon the same land, to secure the conditions of the contract heretofore referred to, which deed being executed, was, by resolution of the board of supervisors, to be deposited with the clerk of the district court of your orator, to be delivered to defendants upon their executing the mortgage aforesaid. All of which acts on the part of said board of supervisors, if legal and valid, operated to divest your orator of all claim and ownership, right, or control of any of said land or funds and claims, and obligated your orator to convey to defendants the large sums of money and large quantities land-scrip & land, as aforesaid.

Your orator says that the written contract, as above stated, is
119 void, for the following reasons: That it purports, on its face, to sell and dispose of nearly eight thousand acres of swamp-land, at a less price than one dollar and twenty-five cents per acre, the minimum price fixed by law, contrary to the laws of Iowa regulating the disposal of said lands, and the board of supervisors had no power or authority by law to make such contract, nor to bind your orator thereby.

Your orator further complaining states that said contract is void in that part wherein it attempts to sell and devote a claim upon the United States for indemnity-money, because the said board of supervisors being the agents of your orator, having only such powers as were conferred by law, had no authority by law to contract the sale of cash, or claims for cash, at a discount, or for a mere nominal sum, nor any authority to sell them at all, and their unauthorized act is void as to your orator.

Your orator further states that the deed of conveyance as above

120 set forth is also void, because it purports on its face to absolutely convey in fee simple 3,680 $\frac{51}{100}$ acres of swamp land at a less price than the minimum price of one dollar and twenty-five cents per acre, as regulated by the laws of Iowa, and the board of supervisors had no authority to make such deed, and their act in so doing is void as to your orator.

Your orator further complaining showeth to the court that both the contract and deed as aforesaid were procured by false and fraudulent representations, made by defendants and their agents, concerning facts about which defendant's agent, F. C. D. McKay, and others claimed to know, and of which the board of supervisors as aforesaid were entirely ignorant. But which representations being false in fact, and were known to be false by defendants, were by them fraudulently and falsely urged upon the board of supervisors as true, the said defendants and their agents knowing them to be false, which representations were as
121 follows: It was falsely represented to the board of supervisors as aforesaid, at the time the contract was entered into, that the contract only covered or included about 2,000 acres of swamp land then deeded by the State by your orator; that the words "fund" and "claim" against the general government in said contract was a mere matter of form, and that your orator in fact owned no right against the United States, and nothing could or would ever be realized from any such claim. It was further falsely represented that the indemnity proofs which had been previously filed with the Commissioner of the General Land Office upon the claims of your orator for cash and scrip against the United States, as above stated, were informal and worthless, and that the Commissioner of the General Land Office had taken up the proof upon said claims as filed upon said land & rejected the proofs, deciding that the proofs were informal and insufficient, and refused and rejected the claims of your orator for about eight thousand dollars cash and scrip indemnity,
122 and that the whole claim was worthless in fact; all of which the defendants, by their agents, claimed to be truths within their personal knowledge, but of the truth or falsity thereof the board of supervisors as aforesaid were entirely ignorant, not knowing the value of the property about which they were contracting, but relying upon the assertions & representations of defendants' agents, acted thereon; which representations your orator says were false because the proofs were valid and formal and had not been taken up and decided insufficient, but were awaiting their order in the regular course of business for payment, and were finally allowed and paid; that the representations were not found to be false until the year 1867, & the frauds not discovered until that time.

Your orator further states that other false representations were made as to the object of buying the swamp lands; in this, that the de-
123 fendants desired the lands only for immediate settlement and improvement. Whereas your orator states that as no effort has ever been made to drain & cultivate any of said lands, no such intention ever existed, as is verily believed.

Your orator further complaining says the delivery of the deed aforesaid was obtained by fraud, in this, that the board of supervisors, at the time of executing the deed, adopted a resolution of record, which is attached as part of said deed, authorizing the clerk of the district court to deliver the same only upon the execution of a mortgage to secure the performance of the covenants in the contract aforesaid on part of def'ts. But your orator says that defendants, combining and confederating with the clerk of the district court, one John Bixby, ap-

pointed him the special agent of defendants, to act in the interest of defendants and against the right & interest of your orator, pro-
124 cured the delivery of the deed without executing the mortgage, and without any authority from your orator to deliver the same, and without any release of defendants' obligation to execute the mortgage, and having placed the deed of record, now refuse to perform any of the covenants of the wirtten contract aforesaid.

Your orator, further complaining, says that the said deed and contract are not supported by any sufficient consideration, and are against equity and good conscience, because, as your orator states, the value of the property disposed of by said contract at the minimum price fixed by law was at least fifteen thousand dollars, for which said defendants were to pay but two thousand dollars, and that your orator ought not, in justice and equity, be held to perform said unreasonable contract.

Your orator, further complaining, says that the consideration for which said contract as aforesaid was made has utterly failed as to your orator, for that by the terms of said contract the defendants were to pay
125 your orator two thousand dollars and drain build levees, and fit for cultivation all said lands within eight years from the 20' day of October, A. D. 1862, and also release your orator from all obligation to the United States and the State of Iowa to drain and improve the same, as under the terms of your orator's title he was bound to do. But your orator says that the entire eight years have expired and the defendants have never paid a single dollar consideration money, nor built any public bridges or any other public improvements, neither have defendants made any drains nor levees, nor put into cultivation any of said swamp-lands, but having procured possession of the deed as above set forth & obtained all the indemnity money, refuse to perform any part of the covenants of their contract. Wherefore your orator says that the consideration thereto has failed, and that the said contract & deed ought to be cancelled and set aside and declared of no binding force upon your orator.

126 Your orator, further complaining, says that, in pursuance of the terms of the written contract, the board of supervisors of your orator at request of defendants, appointed, by a written power of attorney, in October, A. D. 1862, one J. C. Savery, nominally agent of your orator, but real agent of defendants, which agent and other agents of defendants have received by virtue of said authority, for the use of defendants, seven or eight thousand dollars indemnity money in cash from the United States & State of Iowa, the property of your orator, which the said Savery and other agents received and paid over in the interest and for the use of defendants, all of which, with interest from the date of receiving the same, is justly due and owing from def'ts to your orator, and was received through & as direct consequence of the contracts, misrepresentations, & fraud as aforesaid.

Your orator further states that the said contract contained a
127 stipulation in substance that the defendants would pay all claims & charges against the swamp-land & funds which your orator was under obligations to pay at time of the contract as the board of supervisors should decide to be just and right. Your orator says at that time your orator was under obligations to pay for certain indemnity proofs, surveyor's and witness' fees, and other services, out of the indemnity moneys received, the sum of two thousand and two hundred dollars, which was a just charge against the indemnity money received for preparing the indemnity proofs and collecting indemnity money, which demand or claim the defendants assumed to pay and agreed to

release your orator therefrom, and which the board of supervisors decided to be a just and right claim, but which defendants refused to pay and induced the board of supervisors to litigate the same; at the end of which litigation your orator, in a certain suit in the district
128 court of Page County, Iowa, wherein F. M. Davis was plaintiff, and your orator defendant, was adjudged to pay the aforesaid sum and costs, which upon appeal was increased, until your orator was compelled to pay two thousand seven hundred dollars in judgment, costs, & reasonable att'y's fees, which was paid at the request and for the use of defendants upon the claim or debt assumed by defendants, and which was a just charge or lien upon moneys received by defendants, and which defendants refuse to pay to your orator, although often requested to do so, and as they in justice ought to have done.

Your orator further expressly charges that said defendants, for an excuse for their wrongs and misdoing, pretended to insist that the contract aforesaid does not require them to pay anything but the two thousand dollars, and that they, as they aver, have paid that sum in to the county treasurer of your orator, and that the contract is valid, because it was submitted to a vote of the people at the October election,
129 1862, and adopted by a majority of the people at said election. But your orator expressly charges the truth to be that by the written stipulation in said contract defendants assumed expressly to pay the charges which your orator was under obligation to pay for preparing indemnity proofs to secure the allowance of indemnity funds, and expressly agreed to become responsible and pay off all charges on said funds, but by reason of their refusal to pay the same, and by reason of the judgment of the district court of Page County, Iowa, as above stated, your orator was compelled to pay the two thousand dollars and seven hundred dollars more to liquidate the obligation assumed by defendants; whereby the said two thousand dollars was in equity never received by your orator upon said contract, but only paid through your orator's hands to defendants' own use & benefit to discharge
130 the liens justly chargeable to the money received by defendants as indemnity moneys from the United States on account of your orator and nothing paid on said contract, the 2,000 $ paid not being def'ts' own money, but only a small portion of indemnity money previously received by defendants.

Your orator further charges the truth to be that the mere fact of the people voting upon said contract and adopting the same ought not in equity to purge the contract of the false & fraudulent representations previously made to the board of supervisors, as above set forth. But your orator expressly charges that false and fraudulent representations were made to the people just before the election upon said contract, to induce the people to adopt the same, by the agents of defendant falsely representing that the contract only included two thousand acres of land, that the indemnity claims were rejected & lost, and were worthless, and the proof insufficient and informal, all of which
131 was believed and relied upon by the people.

Your orator further expressly charges that said election was brought about and improperly influenced by the payment of large sums of money by defendants to the officers of your orator to use their influence in favor of the adoption of said contract, to fill out tickets to be voted by the people in a particular way, so as to count for the adoption of the contract. Your orator expressly charges that said election was unlawful in this, that there were not three copies of the contract to be voted upon posted in each civil township of the county, as required by

pointed him the special agent of defendants, to act in the interest of defendants and against the right & interest of your orator, pro-
124 cured the delivery of the deed without executing the mortgage, and without any authority from your orator to deliver the same, and without any release of defendants' obligation to execute the mortgage, and having placed the deed of record, now refuse to perform any of the covenants of the wirtten contract aforesaid.

Your orator, further complaining, says that the said deed and contract are not supported by any sufficient consideration, and are against equity and good conscience, because, as your orator states, the value of the property disposed of by said contract at the minimum price fixed by law was at least fifteen thousand dollars, for which said defendants were to pay but two thousand dollars, and that your orator ought not, in justice and equity, be held to perform said unreasonable contract.

Your orator, further complaining, says that the consideration for which said contract as aforesaid was made has utterly failed as to your orator, for that by the terms of said contract the defendants were to pay
125 your orator two thousand dollars and drain build levees, and fit for cultivation all said lands within eight years from the 20' day of October, A. D. 1862, and also release your orator from all obligation to the United States and the State of Iowa to drain and improve the same, as under the terms of your orator's title he was bound to do. But your orator says that the entire eight years have expired and the defendants have never paid a single dollar consideration money, nor built any public bridges or any other public improvements, neither have defendants made any drains nor levees, nor put into cultivation any of said swamp-lands, but having procured possession of the deed as above set forth & obtained all the indemnity money, refuse to perform any part of the covenants of their contract. Wherefore your orator says that the consideration thereto has failed, and that the said contract & deed ought to be cancelled and set aside and declared of no binding force upon your orator.

126 Your orator, further complaining, says that, in pursuance of the terms of the written contract, the board of supervisors of your orator at request of defendants, appointed, by a written power of attorney, in October, A. D. 1862, one J. C. Savery, nominally agent of your orator, but real agent of defendants, which agent and other agents of defendants have received by virtue of said authority, for the use of defendants, seven or eight thousand dollars indemnity money in cash from the United States & State of Iowa, the property of your orator, which the said Savery and other agents received and paid over in the interest and for the use of defendants, all of which, with interest from the date of receiving the same, is justly due and owing from def'ts to your orator, and was received through & as direct consequence of the contracts, misrepresentations, & fraud as aforesaid.

Your orator further states that the said contract contained a
127 stipulation in substance that the defendants would pay all claims & charges against the swamp-land & funds which your orator was under obligations to pay at time of the contract as the board of supervisors should decide to be just and right. Your orator says at that time your orator was under obligations to pay for certain indemnity proofs, surveyor's and witness' fees, and other services, out of the indemnity moneys received, the sum of two thousand and two hundred dollars, which was a just charge against the indemnity money received for preparing the indemnity proofs and collecting indemnity money, which demand or claim the defendants assumed to pay and agreed to

release your orator therefrom, and which the board of supervisors decided to be a just and right claim, but which defendants refused to pay and induced the board of supervisors to litigate the same; at the end of which litigation your orator, in a certain suit in the district
128 court of Page County, Iowa, wherein F. M. Davis was plaintiff, and your orator defendant, was adjudged to pay the aforesaid sum and costs, which upon appeal was increased, until your orator was compelled to pay two thousand seven hundred dollars in judgment, costs, & reasonable att'y's fees, which was paid at the request and for the use of defendants upon the claim or debt assumed by defendants, and which was a just charge or lien upon moneys received by defendants, and which defendants refuse to pay to your orator, although often requested to do so, and as they in justice ought to have done.

Your orator further expressly charges that said defendants, for an excuse for their wrongs and misdoing, pretended to insist that the contract aforesaid does not require them to pay anything but the two thousand dollars, and that they, as they aver, have paid that sum in to the county treasurer of your orator, and that the contract is valid, because it was submitted to a vote of the people at the October election,
129 1862, and adopted by a majority of the people at said election. But your orator expressly charges the truth to be that by the written stipulation in said contract defendants assumed expressly to pay the charges which your orator was under obligation to pay for preparing indemnity proofs to secure the allowance of indemnity funds, and expressly agreed to become responsible and pay off all charges on said funds, but by reason of their refusal to pay the same, and by reason of the judgment of the district court of Page County, Iowa, as above stated, your orator was compelled to pay the two thousand dollars and seven hundred dollars more to liquidate the obligation assumed by defendants; whereby the said two thousand dollars was in equity never received by your orator upon said contract, but only paid through your orator's hands to defendants' own use & benefit to discharge
130 the liens justly chargeable to the money received by defendants as indemnity moneys from the United States on account of your orator and nothing paid on said contract, the 2,000 $ paid not being def'ts' own money, but only a small portion of indemnity money previously received by defendants.

Your orator further charges the truth to be that the mere fact of the people voting upon said contract and adopting the same ought not in equity to purge the contract of the false & fraudulent representations previously made to the board of supervisors, as above set forth. But your orator expressly charges that false and fraudulent representations were made to the people just before the election upon said contract, to induce the people to adopt the same, by the agents of defendant falsely representing that the contract only included two thousand acres of land, that the indemnity claims were rejected & lost, and were worthless, and the proof insufficient and informal, all of which
131 was believed and relied upon by the people.

Your orator further expressly charges that said election was brought about and improperly influenced by the payment of large sums of money by defendants to the officers of your orator to use their influence in favor of the adoption of said contract, to fill out tickets to be voted by the people in a particular way, so as to count for the adoption of the contract. Your orator expressly charges that said election was unlawful in this, that there were not three copies of the contract to be voted upon posted in each civil township of the county, as required by

law. That the board of supervisors, in submitting the contract to a vote of the people, made no proclamation of said election or authorized any one to make any such proclamation, as required by law. By reason whereof, neither the payment of the two thousand dollars nor
132 the election could or ought in equity to be construed as binding your orator to the full performance of said contract.

Your orator further states that in consequence of the matters above set forth your orator, after a demand & refusal of performance by defendants of the covenants of said contract, have elected to rescind said contract, and the board of supervisors of your orator have passed a resolution rescinding all the said contract and deed, and therefore bring this bill and pray this honorable court to give a decree cancelling and setting aside said contract and deed as to your orator.

To the end, therefore, that said defendants may (if they can) show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several & respective knowledge, remem-
133 brance, information, & belief, full, true, direct, & perfect answer make to such interrogatories hereinafter numbered & set forth as by the note hereinunder written they are respectively required to answer, that is to say:

1st. Whether defendants have received any swamp-land indemnity money, from the United States or the State of Iowa, on account of swamp land in Adams County, and to give a particular statement of the time each several amount was received, and how much in all, and to whom the same was paid & by whom received.

2nd. Whether the said defendants have expended any part of the indemnity money received by them in draining, building levees, and fitting for cultivation any swamp land for which indemnity money has been so received in said county, and to particularly described each tract of swamp land drained, leveed, or fitted for cultivation, and of the amount of money expended on each tract.

134 Your orator therefore prays that the said defendants may be required to bring the original contract and deed, as above described, into court, that the same may be dealt with by the court; that the said contract may be decreed rescinded, null, and void, that they may be cancelled & set aside, and decreed to be of no binding force whatsoever upon your orator, and that your orator may be released from the further performance of the same, and that the title to the land described in said deed may be quieted and confirmed in your orator; that an account may be taken of money received by defendants, and that they be decreed to pay over to your orator whatever sums shall be found due your orator, with interest from the date of receiving the same, and especially the sum of about eight thousand dollars, so received; and in case the court shall find, upon the hearing hereof, that plaintiff is not entitled to have the contract rescinded, then your
135 orator prays that defendants may be decreed to pay to your orator two thousand seven hundred dollars, with six per cent. interest from June 9th, A. D. 1869, the amount of moneys paid out to defendants' use and benefit, and that your orator have his costs of suit herein expended, and generally such other and further relief as the nature of his case may require and as may be according to equity.

(S'g'd) ADAMS COUNTY,
By FRANK M. DAVIS, *Sol.*

STATE OF IOWA,
Adams County, ss:

Henry G. Ankeny, of lawful age, duly sworn, deposes and says he is chairman of the board of supervisors of Adams County, Iowa, has heard the foregoing bill read over and knows its contents, and that the same is true of his own knowledge, except as to matters which are therein stated to be on information and belief, and that as to those matters, he believes them to be true.

(Signed) H. G. ANKENY.

136 I, James Widner, clerk of the district court in and for said county & State, hereby certify that H. G. Ankeny personally appeared before me this day and subscribed the above affidavit in my presence, and made oath that he had heard the above bill read and that he knew the contents thereof, and that the same are true of his personal knowledge, except as to matters stated upon information & belief, and as to those matters he believed them to be true.

Witness my hand and the seal of said court this the 23rd day of Dec., A. D. 1870.

[SEAL.] (S'g'd) JAMES WIDNER,
Clerk Dist. Court.

NOTE.—The defendant' will please take notice that they are required to make full and true answers, by themselves and their agents in the State of Iowa, to the interrogatories Nos. 1 & 2, as propounded in the body of the foregoing bill.

(S'g'd) ADAMS COUNTY,
By FRANK M. DAVIS,
Solicit.

137 EXHIBIT A.

Agreement made the 30 day of September, A. D. 1862, between the county of Adams, in the State of Iowa, of the one part, and the American Emigrant Company, by F. C. D. McKay, their general agent for the State of Iowa, of the other part.

The said county hereby devotes the swamp lands belonging to said county and all the fund & claim of the county on the general government therefore to the making of the improvements hereinafter mentioned by said company, and agree to sell, release, and convey the same to said company according to this agreement.

The said company agrees to take said lands and fund and claim and to make for said county any public work or improvements therefor which the board of supervisors may request and which are authorized to be made thereunto by law of the full amount and value of two thousand dollars. The specifications for such work to be furnished by the board of supervisors from time to time as they prefer, at any time after October 1st, 1863, and the work to be finished according to such
138 specifications by one year from the first day of January, after the furnishing of such specifications.

In order to ascertain the value of such work and improvements it is agreed that if the board of supervisors shall offer to superintend the making of such improvements *written* without charge to said company, then the said company shall pay in to the treasurer of said county the said sum of two thousand dollars, in current funds, as soon as the first

day of January, A. D. 1865, and if said board does not choose to superintend the making of said improvements, then the jobs are to be let at public auction to the lowest responsible fair bidder, who shall give ample security for the fulfilment, in the usual manner of letting such jobs. No taxes are to be assessed against the property agreed to be sold by this contract while the county holds the legal title thereto or the equitable title by mortgage or otherwise, but as any of it is sold to purchasers the same may be taxed; and the company agree to settle all said lands, fit for settlement, with white settlers and purchasers, and
139 by setting farms of the usual average size, one-third thereof in three years, another third in five years, and the whole of said lands in eight years from the ratification of this contract and the canvass of votes; any part of said land fund or claim the county will assign and convey to said company or its agents at any time on request, but if the claim of the county be not fully paid and satisfied the entire interest so conveyed shall be mortgaged back to the county to secure the fulfilment of this contract, unless other satisfactory security be given therefor.

The company takes said land subject to the provisions of the act of Congress of Sept. 28, 1850, and expressly release the State of Iowa and the county of Adams from all liability in reclaiming said lands or in the draining thereof. Any contract now existing between the said county and any person in relation to said lands or funds are to be respected and fulfilled by said company as the board of supervisors shall decide to be just and right.

The board of supervisors will appoint any agent to transact
140 any business relating to said land fund or claim which said company or its agent may indicate or request, but in no case shall the county be responsible for the faithfulness of such agent *as* for any cost or expense thereof. No lands for the sale of which the county has given a bond for a deed, *or a deed* are induced in this agreement, nor the proceeds thereof, nor are the lands to which F. M. Davis is entitled by a contract heretofore made; and if the company obtains the odd section so-called, those who have claims on them are to be treated as the board would treat them if this contract had not been made.

By order of the board.

JOHN BARNETT, *Ch'm'.*
JOHN BIXBY, *Clerk.*
THE AMERICAN EMIGRANT CO.,
By F. C. D. MCKAY,
Their Gen'l Ag't for the State of Iowa.

STATE OF IOWA,
Adams County, ss:

I, J. P. Cummins, county auditor of Adams County, Iowa, hereby certify that the above is a true and correct copy of the original
141 contract between Adams County and the American Emigrant Company, as the same appears recorded in the records of the proceedings of the board of supervisors now on file in my office.

Witness my hand and the seal of the board of supervisors this 23 day of December, A. D. 1870.

[SEAL.]

J. P. CUMMINS,
Auditor of Adams Co., Iowa.

EXHIBIT B.

Copy of deed.

STATE OF IOWA,
Adams County:

At a regular meeting of the board of supervisors of the county of Adams, in the State of Iowa, at Quincy, in said county, on the seventh day of September, A. D. 1863, the following proceedings were had relating to the sale of the swamp & overflowed lands of said county to the American Emigrant Company; that is to say:

Whereas the American Emigrant Company has requested this county to convey to the trustees of said company, in trust for said company, the swamp & overflowed lands of said county, & the indemnity
142 claim of the county on the United States, the same which has been contracted to be sold to said company by a written agreement between the county & the company, bearing date the third day of September, A. D. 1862, & which is now on file in the office of the district court in said county; and whereas the said company does not ask such conveyance except upon condition that the land and property so conveyed shall be fully mortgaged back to the county to secure to the county the fulfillment by the company of all the terms & conditions of the said written agreements: Therefore, it is

Resolved, That this board does now grant, sell, & convey to the trustees of said company, as requested, the land & property hereinafter mentioned & described in the form following; that is to say:

This indenture, made the seventh day of September, in the year of our Lord one thousand eight hundred & sixty-three, between the county of Adams, in the State of Iowa, of the first part, & Andrew G.
143 Hammond, John Hooker, and Henry K. W. Welch, all of the city of Hartford, in the State of Connecticut, trustees, and in trust for the American Emigrant Company, of the second part, witnesseth:

The said county of Adams, in & by a certain agreement in writing, made by & between the said county & the said American Emigrant Company, bearing date the third day of September, in the year one thousand eight hundred & sixty-two, & now on file in the office of the clerk of the district court of said county, has sold to said company all the swamp & overflowed lands of said county, & all the claims of said county on the United States for or on account of such of said swamp & overflowed lands as have been sold for cash, or located with warrants or scrip by or under the authority of the United States since the swamp-land grant (so called):

Now, therefore, in pursuance of said agreement in writing, & in consideration of the sum of two thousand dollars to the said party of the first part paid by said company, the said party of the first part
144 doth hereby sell, assign, transfer, & quit-claim to the parties of the second part, as such trustees as aforesaid, all & singular the lands and real estate herinafter mentioned & described, the same being situated in the said county of Adams; that is to say:

The southeast quarter of the southwest quarter, & the north half of the southeast quarter of section number eight; and the northeast quarter of the northeast quarter, the northwest quarter of the northwest quarter, & the east half of the northwest quarter of section eighteen, township number seventy-two north, of range number thirty-two west, of the fifth principal meridian, containing, in all, two hundred and seventy-five ($275\frac{68}{100}$) acres & sixty-two hundre'th' of an acre;

The east half of the northeast quarter, & the east half of the southeast quarter of section number twelve; the southeast quarter of the southwest quarter, the northwest quarter of the southeast quarter, &
145 the northeast quarter of the northeast quarter of section number fourteen; the southeast quarter of the southwest quarter, & the northwest quarter of the southeast quarter of section number twenty-two; the northeast quarter of section number twenty-eight, & the northwest quarter of the northwest quarter of section thirty-two, in township number seventy-three north, of range number thirty-four west of the fifth principal meridian, & containing five hundred and sixty acres (560);

The southeast quarter, & the southeast quarter of the northeast quarter of section number ten; the southwest quarter of the northwest quarter, & the northwest quarter of the northeast quarter of section number twelve; the northwest quarter of the southwest quarter, the southeast quarter of the southwest quarter, & the west half of the northwest quarter of section number twenty; the east half of the southwest quarter, the northwest quarter of the southeast quarter, the southeast quarter
146 of the northwest quarter, & the west half of the northeast quarter of section number thirty, in township number seventy-one north, of range number thirty-five west, of the fifth principal meridian, & containing, in all, six hundred and eighty acres (680);

The northwest quarter & the west half of the southwest quarter of section number twelve; the southwest quarter of the northwest quarter of section number fourteen; the southeast quarter & the southhalf of the southwest quarter of section number twenty; the east half of the southwest quarter, the north half of the southeast quarter, & the southwest quarter of the southeast quarter of section number thirty, in township number seventy-two north, of range thirty-five west, of the fifth principal meridian; containing in all one thousand & twelve acres & sixty hundre'ths of an acre (1,012 $\frac{60}{100}$), & containing, in the aggregate, three thousand six hundred & eighty acres & fifty one-hundre'ths of an acre (3,680 $\frac{50}{100}$).

It is hereby declared to be an express condition of this grant
147 that in case said county at this time has not fully obtained a perfect title in fee to any of the said lands, that any interest, claim, or title thereto the county shall hereafter acquire under or by virtue of the said swamp-land grant shall inure to the benefit of the party of the second part without any further or subsequent conveyance thereof, anything herein contained to the contrary notwithstanding. It is also a like condition of this conveyance that in case any lands are included in any of the foregoing descriptions which were not or are not contracted to be sold to said company in & by said agreement in writing, so on file as aforesaid, the same are reserved & excepted from the effect & operation of this conveyance, & are not intended herein or hereby to be conveyed, & all lands reserved from the operation of the said agreement in writing are also reserved from the effect & operation of this conveyance;

& the said party of the first part doth further covenant & agree
148 that all the lands within the said county that may at any time be duly selected as swamp or overflowed lands, & all such lands as may not be included in this conveyance, if any, the party of the first part will at any time convey by deed similar to this conveyance, at the request of the American Emigrant Company, to the said company, its trustees or its assigns; that any proceeds of the said claim on the United States, if any proceeds shall be received, the party of first part will at any time, on like request, assign & transfer in separate or more conven-

ient form to said company, its trustees or its assigns; & any lands that shall be located under or by any scrip, so called, which may be obtained on said claim, the party of the first part will convey in like form to said company, or their trustees or assigns, on reasonable request so to do.

The party of the second part takes this grant subject to all the
149 provisions of the act of Congress of September 28th, 1850, & expressly release the State of Iowa & the said county from all liability for reclaiming said lands. Given under the hands of the board of supervisors of the said county of Adams.

By order of the board of supervisors.

SHERMAN H. BUGBEE,
Chairman.

H. A. SMUR,
R. H. SCHOVLING,
O. B. CASE,
SAMUEL HARDESTY,
SILAS RIGG,
J. H. SMITH,
P. K. LAWRENCE,
Supervisors.

{ SEAL OF THE BOARD OF SUPERVISORS OF ADAMS COUNTY, IOWA. }

JOHN BIXBY,
Clerk of the Board of Supervisors.

[United States rev. stamp $2.00, J. B., Sept. 7, 1863.]

STATE OF IOWA,
Adams County:

On this seventh day of September, in the year one thousand eight hundred & sixty-three, personally came before me, the undersigned, county judge of the said county, the said Sherman H. Bugbee, H. A. Smur, R.
H. Schovling, O. B. Case, Samuel Hardesty, Silas Rigg, J. H.
150 Smith, & P. K. Lawrence, supervisors, & John Bixby, clerk of the board of supervisors of said county, severally to me known to be the identical persons whose names are affixed to the forgoing conveyance as grantors & who executed it & severally acknowledged said instrument of conveyance to be their voluntary act & deed *& their voluntary act & deed* as the board of supervisors of the county of Adams.

{ ADAMS COUNTY, IOWA, COURT SEAL. }

SAMUEL LARIMER,
County Judge.

Resolved, That the said conveyance in the foregoing form be executed by this board & duly acknowledged, so that the same may be recorded, & when so executed be delivered to the clerk of the district court of this county to be by him delivered to the said company, its agents or trustees, whenever a mortgage in due form, duly executed & acknowledged by said trustees & ready for record, shall be delivered to him, the
151 said clerk, which mortgage shall fully convey back to said county all land & property granted to said trustees by this conveyance, & shall secure to said county the fulfillment by the American Emigrant Company of all the terms & conditions of the said written agreement so on file as aforesaid, so far as the same are to be kept and fulfilled on the part of said company.

Resolved, That the yeas & nays on the passage of the foregoing preamble and resolution be and the same are hereby demanded & shall be taken by the clerk.

Whereupon on this, the seventh day of September, A. D. 1863, on motion the foregoing preamble & resolutions were put to vote, & on such vote the following named supervisors, members of the board, voted yea, that is to say: O. B. Case, S. H. Bugbee, H. A. Smur, Silas Rigg, P. K. Lawrence, R. H. Schovling, J. H. Smith, & Samuel Hardesty, in all eight yeas, the same being an unanimous vote of the said board.

STATE OF IOWA,
Adams County:

I, John Bixby, clerk of the district court in & for the said
152 county & ex officio clerk of the board of supervisors of said county, certify that the foregoing is a true transcript of the proceedings of said board as contained in the minutes of said board relating to the sale of the swamp & overflowed lands of said county to the trustees of the American Emigrant Company & of the whole of such proceedings.

In testimony whereof I have hereunto set my hand & affixed the seal of said board this seventh day of September, A. D. 1863.

SEAL OF THE BOARD OF SUPERVISORS OF ADAMS COUNTY, IOWA. JOHN BIXBY, *Clerk.*

[U. S. rev. stamp 10, J. B., Sept. 7, 1863.]

STATE OF IOWA,
Adams County, ss:

I, A. L. Wells, county recorder in and for said county, do hereby certify that the foregoing is a true, perfect, and correct copy of the deed of Adams County to the American Emigrant Company as therein set forth as the same appears of record in my office in book E, pages 539
153 to 542 inclusive.

Witness my hand this 23rd day of December, A. D. 1870.

A. L. WELLS,
County Recorder.

(Endorsed:) Filed Dec. 29th, 1870. George B. Corkhill, clerk.

154 Afterwards, to wit, on the 6 day of March, 1871, the said respondents, by its said att'ys, filed in said clerk's office its demurrer to complainant's amended bill in said cause, which said demurrer is in the words and figures following, to wit:

155 In the circuit court of the United States, dist. of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT CO.

The defendant by protestation, not confessing all or any of the matters and things in complainant's bill alleged in manner and form as the same are therein set forth, doth demur to said bill, and for cause of demurrer showeth, that there is no equity in said bill, and that the deed of conveyance sought to be cancelled is shown to have been lawfully executed upon a valuable consideration paid to complainant and still retained by complainant; that as to any breaches of this contract alleged, the remedy of complainant is full, adequate, & complete in a court of

law. Wherefore, and for divers other good causes of demurrer appearing upon the face of said bill of complainants, the defendant doth demur, and asks the judgment of the court whether he shall further answer, and prays to be hence dismissed with his costs.

(Signed) WITHROW & WRIGHT,
NOURSE & KAUFFMAN,
Solicitors for Def't.

156 We certify that in our opinion the foregoing demurrer is well founded in point of law.

(Signed) NOURSE & KAUFFMAN,
Solicitors for Def't.

THE STATE OF IOWA,
Polk County, ss:

I, James C. Savery, being duly sworn according to law, do depose & say that I am the general agent of defendant, and have conduct & charge of the business concerning the defense of this cause, and that the foregoing demurrer is not interposed for delay.

(Signed) J. C. SAVERY.

Subscribed in my presence by J. C. Savery, and before me by him sworn to on this 4th day of March, 1871.

[SEAL.] (S'g'd) B. F. KAUFFMAN,
Notary Public.

(Endorsed:) Filed Mar. 6, 1871. George B. Corkhill, clerk.

157 Afterwards, to wit, on the 16 day of May, the same being of the May term, 1871, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, May term, 1871. Tuesday, May 16, 1871.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 168. Equity.

This day this cause coming on for a hearing, the complainant appearing by Davis & Polk, and defendant by Withrow & Wright and Nourse & Kauffman, the defendant withdraws his demurrer, and by order of court has until July rules to answer, and the cause is continued.

158 Afterwards, to wit, on the 31 day of May, the same being of the May term, 1871, of said court, there appears in the records of the proceedings thereof in said cause, the following entry, to wit:

United States circuit court, district of Iowa, May term, 1871. Wednesday, May 31, 1871.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT CO. } No. 168. Eq.

This cause coming on for a hearing, upon defendant's motion by Withrow & Wright, its attorneys, it is ordered that the time for defendant to plead be extended to August rule day 1871.

159 Afterwards, to wit, on the 16th day of August, 1871, said respondent, by its said attorneys, filed in said clerk's office its answer to the bill of complaint in said cause, which said answer is in words and figures following, to wit:

160 In the circuit court of the United States for the district of Iowa

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY.

The answer of The American Emigrant Company, defendant, to the plaintiff's bill of complaint:

This defendant, now, and at all times hereafter, saving and reserving unto itself all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties, or other imperfections in complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as the defendant is advised is material or necessary for it to make answer unto, this defendant answering saith:

That it admits that plaintiff is a municipal corporation, organized under the laws of the State of Iowa, and that the defendant is a private corporation, organized under the laws of the State of Connecticut.

161 That on or about the third day of September, 1862, plaintiff was the owner of swamp-lands, the amount of which this defendant is not now able to state, and therefore demands satisfactory proof thereof. That plaintiff was also the equitable owner of a large amount of other swamp-lands, and of certain claims for swamp-land indemnity moneys and scrip. That the plaintiff had caused proofs to be filed with the Commissioner of the General Land Office at Washington that said lands and claims were the property of plaintiff under the act of Congress, approved the 28th day of September, 1850, entitled "An act to enable the State of Arkansas, and other States, to reclaim swamp-lands within their limits," the act of Congress approved March third, 1857, entitled "An act to confirm to the several States swamp and overflowing lands selected under the act of September 28, 1850," and the act of 2nd of March, 1849, an act of the legislature of the State of Iowa, approved January 14, 1853, entitled "An act to dispose of the swamp

162 and overflowed lands within the State, and to pay the expenses of selecting and surveying the same," and other public acts of Congress, and legislation amendatory thereof and thereto. That at the date aforesaid the then acting board of supervisors of plaintiff entered into a contract with this defendant, a copy of which is set out as Exhibit A to plaintiff's bill. That subsequent to the date of said written contract, and on the seventh day of September, 1863, the said board of supervisors did execute a conveyance to this defendant, which is found of record in the deed record-book of Adams County, Iowa, in book E, pages 539, 542, as this defendant is informed and believes, a copy of which is appended to complainant's bill as Exhibit E. That the contract aforesaid between plaintiff and defendant was submitted to a vote of the people at the October election of 1862, and was adopted by a majority of votes cast at said election; that the said board of supervisors passed resolutions attempting to rescind said contract, as alleged in said bill.

163 That this defendant denies that the value of the interest of said county in the swamp-land and swamp-land claims on the

third of September, 1862, was of the value of ten thousand dollars;

That the terms of the contract entered into between plaintiffs and defendant was other than those shown by the written contract, a copy of which is appended as an exhibit to plaintiff's bill;

That the deed of conveyance executed by the said plaintiffs' board of supervisors to the defendant, contains any other covenant or agreement than those set out in the deed itself, a copy of which is set out as an exhibit to plaintiff's bill;

That said written contract is void because it proposed on its face to sell and dispose of eight thousand acres of swamp-land at a price less than that fixed by law; that the board of supervisors had no authority to make such contract as a binding obligation of the plaintiff; that the board of supervisors made the contract disposing of the claims of plaintiff against the government of the United States with indemnity scrip & money without authority of law;

164 That said deed of conveyance is void for the reason that it conveys land for less than the minimum price fixed by law; that the board of supervisors had no authority to make such deed; that said contract and deed were procured by false and fraudulent representations made by defendants and its agents; that any representations made by F. C. D. McKay or other agents of defendant, touching facts of which the board of supervisors had no knowledge; that any representations were made by said McKay or any other agent of said defendant were false and known to be false by this defendant; that any false and fraudulent representations were urged upon the board of supervisors of plaintiff as true by defendant & its agents, knowing them to be false; that it was falsely represented to the board of supervisors at the time the contract was entered into that it covered only about two thousand acres of swamp land then deeded by the State to the plaintiff;

165 that it was then represented that the words "fund" or "claim" against the general government in said contract was a mere matter of form, and that the plaintiff in fact owned no right against the United States, and that nothing would or could ever be realized from any such claim;

That the Commissioner of the General Land Office had passed upon the claims of the plaintiff against the United States for cash and scrip and that they were uniformly held worthless; that the said Commissioner had taken up the proofs of the said claim as filed by the plaintiff and rejected the same, deciding that they were informal and insuffecient; that he had rejected the claims of the plaintiff for about eight thousand dollars cash and scrip and other indemnity, & the whole claim was worthless; that the agent of this defendant claimed that the said representations were true within their own personal knowledge; that the said board of supervisors were utterly ignorant of the truth or falsity

166 of said representations; that plaintiff's board of supervisors had no knowledge of the property about which they were contracting; that they relied upon the assertions of defendant's agent; that plaintiff had no knowledge as to the truth and falsehood of the alleged representations made by defendant's agent until the year 1867, and that the alleged frauds were not discovered until that time; that any false representations were made to said board as to the object of buying said swamp lands; that said agent represented to plaintiff that defendant desired to settle the land immediately; that no intention ever existed on the part of the defendant to improve and reclaim said land; that the delivery of the deed aforesaid was obtained by any fraudulent action of

this defendant or its agent; that defendant conspired and confederated with the clerk of said county, one John Bixby, appointing him special agent of defendant to act in its interest and against the rights and interest of the plaintiff, & that it procured him to deliver said deed
167 without any authority from plaintiff to deliver the same; that they now refuse to perform any of the covenants of the written contract aforesaid; that said deed and contract are not supported by any sufficient consideration, and are against equity & good conscience.

That said land was at the time said contract and deed was executed valued at fifteen thousand dollars; that J. C. Savery has received from the Government of the United States for the use of the plaintiff seven or eight thousand dollars indemnity money, which with interest thereon is due to the plaintiff; that he illegally or improperly paid the same to the defendant, as in said bill alleged; that the plaintiff was under obligations to pay for certain indemnity proofs, surveys, witness-fees, and other services, out of the indemnity money and other money received from the United States, the sum of two thousand dollars, which was a just charge against such fund for preparing the indemnity proofs and collecting indemnity money, which demand or claim this defend-
168 ant consented to pay and to release the plaintiff therefrom; that any false representations were made to the people just before election concerning said contract, to induce them to adopt the same, as is alleged in said bill; that said election was brought about improperly, or was influenced by the payment of large sums of money by the defendant to the officers of the plaintiff to induce them to use their influence in favor of the adoption of the said contract as in said bill alleged; that said election was in any manner irregular or illegal; that it was not duly & properly called and held as required by law.

This defendant having answered the specific allegations in said bill set out and contained, for further additional answer thereto says: that when the contract set out as Exhibit A to plaintiff's bill was executed, and on the 3*d* day of September, 1862, the claims of the plaintiff to swamp lands unpaid and to indemnity money and scrip was *was* in an unsatisfactory condition, and that said county had expended a
169 large amount of money in attempting to gain the necessary conveyance or recognition of its title to said swamp land and the payment and delivery of the said indemnity money and scrip, and that with the exception of about two thousand acres of land in place such efforts and attempts had been uniformly unsuccessful; that the selection had been made and proof taken showing the character of the land; that proof of the same character after examination had been held insufficient and rejected by the proper officers of the Land Bureau in the Department of the Interior of the United States.

That at the time the said contract was entered into the rulings of said officers, which were then being followed as precedents, would exclude proofs which had been taken by or for said plaintiff, and would require new proofs to be made in a form & of a character which would render it impossible for said plaintiff to successfully claim so large an amount of land, money, & scrip as was subsequently allowed; that these
170 facts were truthfully represented to the board of supervisors of the plaintiff prior to the execution of said contract.

That this defendant purchased the claim of said county against the Government of the United States for indemnity money and scrip, and also purchased land in place of said county, assuming all risks of failure to establish said claim or any portion thereof; that defendant also undertook to prosecute said claim at its own expense, and to de-

fray all expenses which plaintiff had then incurred attempts to select said lands and to prove the character thereof; that at the time said contract was entered into the claims of said plaintiff had no market value; that no satisfactory progress had been made for years in the prosecution of the same and other claims of its class and character, and that these facts were well known to both parties at the time that said contract was entered into; that it was entered into without misrepresentation on the part of said defendant, and with a full understanding of the facts by the plaintiff; that it was duly and regularly submitted
171 to the electors of said county at a general election, and a large majority of the electors of the county, who voted on the question, voted in favor of said contract; that after it was ratified by the votes of the majority of said electors at said election, this defendant prosecuted successfully said claims at an expense of great labor and much money.

That said plaintiff remained satisfied with said contract, and with the conduct of the defendant with regard thereto, as defendant alleges, upon information and belief, until induced by one Frank M. Davis to enter into a champertous contract for the prosecution of this suit; that defendant is informed and believes this suit is being prosecuted in execution of & pursuant to a champertous agreement between said Davis and said plaintiff; that there is a defect of parties herein, in this, that the said Davis is interested with the plaintiff herein in its alleged cause of action, and should be joined with it as a coplaintiff.

And this defendant, for further and additional answer to said
172 bill, says that it denies the allegation of said bill that it has not performed the covenants and agreements on its part, and that said plaintiff has been compelled to pay any judgment by reason of alleged neglect & refusal of the said defendant to comply with its demands; and it admits that in said contract it undertook to respect and fulfil all existing contracts between said plaintiff and other persons in relation to said lands; and it further alleges, upon information and belief, that the claim of said F. M. Davis, referred to in said bill, was not just and equitable; that the alleged judgment was had, procured, and received by the collusion of the plaintiff with the said F. M. Davis and in the execution of a fraudulent combination between plaintiff and the said Davis to wrong and ingure this defendant; that if the court shall find in this cause that said claim was a valid and just claim, that said judgment was not procured by fraud and collusion between said plaintiff
173 and said Davis, this defendant is ready & willing, and will pay the same.

And this defendant, for answer to the first interrogatory propounded in said bill, says that it has received, on account of swamp lands in Adams County, Iowa, the sum of six thousand seventy-five and $\frac{11}{100}$ dollars; that the same was received at different times, but at what particular dates and in what amounts this defendant is unable to give.

And for answer to the second interrogatory it says that it has not expended any of said moneys in draining, building *leens*, or fitting for cultivation any swamp land for which indemnity money has been paid, and for answer thereto it says that it is now, and ever has been, ready to protect said plaintiff against any liability to make such improvements.

And this defendant, for further and seperate answer to said bill, says that it has fully performed all of the covenants upon his part,
174 the performance of which were conditions precedent to the conveyance by plaintiff to defendant of the lands and other property

in controversy; that it is ready and willing to perform any conditions precedent to such conveyance to be performed by it, and alleges that it is entirely solvent, has a large amount of real and other property within the jurisdiction of this court which may be subjected to the satisfaction of any judgment which may be recovered against it in an action at law for a breach of any and all covenants entered into by it.

And this defendant submits to this honorable court that all & every of the matters in said plaintiff's bill of complaint mentioned and complained of are matters which may be determined at law, and with respect to which plaintiff is not entitled to any relief in equity, and this defendant hopes that it shall have the same benefit of the defense as if it had demurred to the plaintiff's bill.

And this defendant denies all & all manner of unlawful combina-
175 tion and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained material or necessary for the defendant to make answer unto not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge and belief of this defendant, all of which matters and things this defendant is ready and willing to aver & maintain, and prove, as this honorable court shall direct, and humbly prays to be hence discharged with its reasonable costs and expenses in this behalf most wrongfully sustained.

(Signed) WINTHROW & WRIGHT, AND
NOURSE & KAUFFMAN,
Sol'rs for Def't.

176 STATE OF IOWA,
Polk County, ss:

Horace L. Skinner, of said county, being duly sworn according to law, deposes and says the he is the agent of said defendant, and has a general knowledge of its affairs & business, & is authorized to make this affidavit for defendant; that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the statements therein contained upon information and belief; and as to those matters he believes it to be true.

(Signed) H. L. SKINNER.

Subscribed by H. L. Skinner in my presence, and by him sworn to before me, August 16, 1871.

[SEAL.] (S'g'd) W'M O. CURTISS,
Notary Public Polk Co., Iowa.

(Endorsed:) Filed August 16, 1871. George B. Corkhill, clerk.

177 Afterwards, to wit, on the 30th day of Aug. 1871, the said complainant, by its said att'ys, filed in said clerk's office its replication to respondent's answer in said cause, which said replication is in words and figures following, to wit:

178 In the circuit court of the United States for the district of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY.

The replication of Adams County, complainant, to the answer of the American Emigrant Company, defendants.

This repliant, saving and reserving to himself now and at all times hereafter all manner of advantage of exceptions which can or may be

had and taken to the manifold errors, uncertainties, and insufficiencies, inconsistenc'es and other imperfections of answer of said defendants, for replication thereunto saith:

That the statements of fact in justification of the contract and deed and matters of special defense are all untrue, and are therefore denied. Denies that the swamp land-claims were in all unsatisfactory condition, and that proofs of a similar character had been rejected, and denies that it is any defense in this suit, as plaintiff's indemnity proofs were
179 not rejected; denies that defendant prosecuted the said claims for money and scrip at great expense and labor, or at any expense or labor whatever; denies that there is any champertous contract about the prosecution of this suit; denies any defect of parties; denies that the judgment referred to was obtained by fraud or collusion in any manner, and denies every fact in said answer stated inconsistent with the averments of plaintiff's bill. Says the bill is true, and that plaintiff doth maintain and is ready to prove his said bill to be true, certain and sufficient; that the said contract was in substance as stated in the bill, and is invalid and voidable for reasons there stated; that said bill is sufficient and true in substance, and the answer of defendant insufficient & untrue & uncertain to be replied to by this repliant. And further asks that any other matter in the said answer contained inconsistent with the averments of said bill, proper to be replied to as ma-
180 terial and effectual in law or equity, as a defense be considered replied to, avoided, traversed, and denied, as the case may be, according to truth and right, and that this repliant is now and ever will be ready to aver and prove the truth of said bill, as this honorable court shall direct, and humbly prays as in his said bill he hath already prayed.

(S'g'd) ADAMS COUNTY,
By FRANK M. DAVIS, *Att'y.*

STATE OF IOWA,
Adams County:

Henry G. Ankeny, of lawful age, duly sworn, deposes and says he is chairman of the board of supervisors of Adams County, Iowa, and that he has heard the above replication read over, and knows the contents thereof and that the matters therein stated are true, as he verily believes.

(S'g'd) H. G. ANKENY.

I, James Widner, clerk of the district court in and for said county and State, hereby certify that Henry G. Ankeny personally appeared before me this day, and subscribed the above affidavit in my presence, and made oath that he had heard the above replication read, and the
181 matters stated therein are true, as he verily believes.

Witness my hand and the seal of said court, this 26th day of August, A. D. 1871.

[SEAL.] (S'g'd) JAMES WIDNER,
Clerk Dist. Court Adams Co., Iowa.

(Endorsed:) Filed Aug. 30th, A. D. 1871. George B. Corkhill, clerk.

182 Afterwards, to wit, on the 2d day of October, 1871, there was filed in said clerk's office a notice of motion for order to take depositions in said cause, which said motion is in words and figures following, to wit:

183 In the district court of the United States for the district of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 168. Equity.

To Mess'rs WITHROW & WRIGHT, *Solicitors for complainant:*

You will please take notice that the complainant desires the evidence in the above-entitled cause to be taken orally, before an examiner to be specially appointed by this court, and that a motion for an order to take depositions before such examiner and the appointment of a special examiner in Adams County, Iowa, for that purpose has been filed in accordance with the 67th rule in equity & the statute in such case provided.

ADAMS COUNTY,
By FRANK M. DAVIS, *Sol.*

Due service of the within admitted this 27 Sept., 1871.
By WITHROW & WRIGHT,
Att'ys for Def't.

Marshal's feess: Service, $2.00; mileage, .06; copy, .50; total, $2.56.

(Endorsed:) Filed Oct. 2, 1871. George B. Corkhill, clerk.

184 On the same day, to wit, October 2nd, 1871, there was filed in said clerk's office a motion and affidavit, which said motion and affidavit are in words and figures following, to wit:

185 In the circuit court of the United States, district of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY.

Motion for the appointment of a special examiner & order to take depositions.

Now comes complainant and moves the court for the appointment of some suitable person to be named by the court to take the depositions of witnesses in the above cause in Adams Co., Iowa, and for cause presents the affidavits hereto attached.

(Signed) FRANK M. DAVIS,
Solicitor for Complainant.

In the circuit court of the United States for the district of Iowa, in chancery. Before Hon. J. M. Love, chancellor.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 168.

186 Adams County, complainant, represents that the above-entitled cause is fully and completely at issue by the fileing of a replication to defendant's answer.

That it is necessary to take the depositions of a great many witnesses now residing in Adams County, Iowa, to establish the facts set forth in

complainant's bill. That the distance is about one hundred miles by direct line and two hundred and forty miles by railroad from the place of holding this court; plaintiff therefore asks the appointment of a special examiner to be named by this court before whom said deposition may be examined.

(Signed) ADAMS COUNTY,
By FRANK M. DAVIS.

STATE OF IOWA,
Adams County:

Frank M. Davis, duly sworn, on oath says he has read the statements of fact made in the above application for the appointment of a special examiner, and is acquainted with the facts stated in the said bill, &c., and that the facts above stated are all true, as he verily believes.

FRANK M. DAVIS.

187 Subscribed in my presence by Frank M. Davis, and sworn to before me this 16th of September, A. D. 1871.

[SEAL.] (Signed) JAMES WIDNER,
Clerk Dist. Court.

(Endorsed:) Filed Oct. 2nd, 1871. George B. Corkhill, clerk.

188 Afterwards, to wit, on the 17th day of October, the same being of the October term, 1871, of said court, there appears in the records of the proceedings thereof in said cause, the following entry, to wit:

United States circuit court, district of Iowa, October term, 1871, Tuesday, October 17, 1871.

ADAMS COUNTY
vs.
AMERICAN EMIGRANT CO. } No. 168, Eq.

This cause coming on for a hearing, the plaintiff appears by Davis & Polk, and def'ts by Withrow & Wright & Nourse & Kauffman. The time for taking evidence herein is extended to April rule day, 1872, and the cause is continued.

189 Afterwards, to wit, on the 17th day of May, the same being of the May term, 1872, of said court, there appears in the records of the proceedings thereof in said cause, the following entry, to wit:

United States circuit court, district of Iowa, May term, 1872. Friday, May 17, 1872.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT CO. } No. 168. Equity.

This cause coming on for hearing, the same was continued, as per stipulation filed.

190 Afterwards, to wit, on the 24th day of October, 1872, said respondent, by its said att'ys, filed in said clerk's office a motion and affidavit for continuance, which said motion and affidavit are in the words and figures following, to wit:

191 Oct. term U. S. circuit court.

THE COUNTY OF ADAMS
vs.
THE AMERICAN EMIGRANT COMPANY.

And now comes defendant & moves the court to continue this cause until the next term of this court, and for cause of motion shows that plaintiff has filed in this cause the deposition of one N. B. Moore, since the commencement of this term of court, which deposition was taken upon commission and interrogatories, and def't or his attorney has not seen said deposition until to-day.

That said deposition appears to have been taken in August last, but for some reason unknown to defendant or his attorney, was not filed until the 16th of the present month.

That said deposition contains material evidence upon a material point of plaintiff's case, and upon which plaintiff had failed to make any proof until the filing of said deposition. Defendant shows that he can disprove the statements of said witness, as affiant believes, in the material
192 parts thereof. That James C. Savery, who resides at Des Moines, is a material witness, by whom def't can prove that the money paid by def't to said N. B. Moore was paid as a consideration for other services than any pretended services of said Moore in the case of Davis vs. Adams County.

That said N. B. Moore had possession of a certain deed of lands from Page County to def't, and said payments were made in consideration of the promise of said Moore to deliver said deed. That said Savery never employed said Moore as attorney for the American Emigrant Company & to appear for said company in said suit of Davis vs. Adams County. Def't expects to prove by said Sibley, who resides at Chicago, Ill., that def't employed said Sibley to procure the dismissal of the American Emigrant Co., and party to said suit, and that said plaintiff Davis did dismiss said suit as to said company, and no appearance was thereafter made for said co., and that said Moore was never employed to
193 appear for said company in said case. That def't, its agents or att'ys, had no knowledge of the contents of said deposition until to-day, and could not rebut the same. That the statements herein are true. That the cause is important to defendant and involves large interests, & its determination will seriously affect other interests of def't. That defendant desires the continuance hereof, in order that he may have a fair & impartial trial on the facts of the case as they may be shown by competent evidence.

(S'g'd) NOURSE & KAUFFMAN,
For Def't.

194 I, J. C. Savery, being duly sworn according to law, do depose and say that I have heard the foregoing application read, and that the same is true as I verily believe, & that I was gen'l agent of def't at the times referred to in said application, & now am a director of said company.

(S'g'd) J. C. SAVERY.

Subscribed by J. C. Savery in my presence, and before me by him sworn to on this 23*d* day of October, 1872.

[SEAL.] (S'g'd) B. F. KAUFFMAN,
Notary Public, Polk County, Iowa.

(Endorsed:) The County of Adams vs. The American Emigrant Com-

pany. Motion for continuance & affidavit. Filed Oct. 24th, 1872. George B. Corkhill, clerk.

195 Afterwards, to wit, on the 30th day of October, the same being of the October term, 1872, of said court, there appears in the records of the proceedings thereof in said cause, the following entry, to wit:

United States circuit court, district of Iowa, October term, 1872.
Wednesday, October 30, 1872.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 168. Eq.

This cause came on to be heard this day, pl'ff appearing by Davis & Polk, and defendant by J. A. Harvey & Nourse & Kauffman, and the same is submitted to the court. The plaintiff to file printed argument in forty (40) days from this date; defendant to answer in thirty days thereafter; copies of arguments to be mutually served, and same to be sent to the judges with record of the case.

196 Afterwards, to wit, on the 18th day of Feb'y, 1873, there was filed in said clerk's office in said cause, the following stipulation, to wit:

197 In the circuit court of the United States for the district of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT CO.

It is hereby stipulated between plaintiff and defendant that the defendant shall have until the first day of February, 1873, to print abstract and argument and file the same; and that the plaintiff have until the 25th of February, 1873, to print and file a replication arg'm't, and that the cause be at that time fully submitted by both parties.

Dated Dec. 10, 1872.

(S'g'd) FRANK M. DAVIS,
For Plaintiff.
J. A. HARVEY,
Of Counsel for Def't.

(Endorsed:) Filed Feb'y 18, 1873, and by consent of parties to have same effect as though filed December 10, 1872. George B. Corkhill, clerk.

198 Afterwards, to wit, on the 27th day of May, 1873, there was filed in said clerk's office in said cause, a stipulation of parties, which said stipulation is in words and figures following, to wit:

199 In circuit court of the United States for the district of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } Equity. No. 168.

Upon the reargument of the above as per order of court this day, it is stipulated that—

1st. Plaintiffs is to file argument in print and serve copy upon counsel for def'ts on or before the 4th of July, 1873.

2nd. That defendants are to file answer thereto and serve copies upon counsel of plaintiffs by or before the first day of September, 1873.

3rd. That plaintiff have twenty days thereafter, or till 20th Sept. 1873, to file reply.

(S'g'd) FRANK M. DAVIS, & POLK,
For Plaintiff.

C. S. NOURSE AND KAUFFMAN,
For Def't.

(Endorsed:) Adams County vs. Am. Em. Co. Equity. No. 168. Stipulation for filing reargument. Filed May 27th, 1873. George B. Corkhill, clerk.

200 Afterwards, to wit, on the 4th day of June, the same being of the May term, 1873, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, May term 1873. Tuesday, June 4, 1873.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 168. Eq.

This cause coming on was continued for further argument.

201 On the 31st day of October, 1874, there was filed in said clerk's office in said cause a stipulation of parties, which said stipulation is in words and figures following, to wit:

202 In the circuit court of the United States, district of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 168. Equity.

Decided at the May term, 1874.

A list or schedule of the evidence in the above-entitled cause, to wit:

On behalf of the plaintiff;

1. A copy of list of swamp selections of the county.
2. A list from the co. auditor purporting to show the disposition of the patented swamp lands.
3. Copies of the record of the board of supervisors of the county accepting McKay's proposition & ordering an election on the contract and canvassing the vote and declaring the result of the election; also showing the nomination of J. C. Savery as special agent.
4. Copy of pleadings & transcript in the case of F. M. Davis vs. Adams County.
5. Copy of resolutions of the board demanding pay of the Davis judgment; also a paper purporting to be a letter from F. C. D.

203 McKay to the board, dated Sept. 1, 1863.

6. Copy of record showing the adoption of said resolution by the board at its January session, 1869; the appointment of a committee

to settle with the Am. Em. Co., and the committee's report with copy of the record of the board of Apr. 22, 1869, declaring the contract rescinded.

7. Copies of record of the board of Sept. 5, 1865, & March 13, 1866, allowing the Davis claim of Davis' bill against Adams Co., dated Jan'y 6, 1869, for amount of judgment & costs of judgment docket, dated M'ch 23, 1867; of transcript from supreme court showing dismissal of appeal in Davis vs. Adams Co.; of execution in said cause, and of the record of the board of Jan'y 6, 1869, settling said judgments.

8. Copies of papers from U. S. Treasury Dep't certified by the Sec'y Nov. 22, 1871.

9. Circular from sec'y Am. Em. Co., dated July 24, 1862, and letter of Com. Gen. L. O. to the governor of Iowa, dated May 31, 1862.

10. Same circular certified from State land office.

204 11. Copies from the General Land Office of list of swamp selections reported; of list of lands on which cash indemnity was allowed; of list on which scrip indemnity was allowed; of affidavit of indemnity proof, and of Com'r letter acknowledging receipt of indemnity proof.

12. Deposition of Frank M. Davis.

13. Copies of letters from Gen. L. O. of Feb. 2, 1864, to the governor of Iowa, & of Feb. 23, 1864, to Secr'y of Interior, relative to alleged frauds in Green Co.; & to F. M. Davis of Apr. 15, 1862.

14. Copies of receipts of J. C. Savery to the governor for his endorsements on three drafts—one for $4,303.45; one, $794.58; & one, $997.63.

15. Copy of letter of Com'r Gen. L. O. to F. M. Davis, dated Sept. 11, 1866.

16. Copy of order changing ranges 32 & 33 to the Chariton district.

17. Copy of Savery's app't & bond as special agent.

18. Depositions of Samuel Larimer, Joseph R. Holbrook, O. B. Case, J. D. Hart, John J. Rornang, A. J. Kridlebaugh, G. D. Peterson, H. A. Sumner, R. H. Schovling, John W. Morris, H. G. Ankeny, Cha's

205 Bixler, John Barnett, John Bixby, Alfred White, Isaac Crai, & J. F. Powell.

19. Deposition of N. B. Moore.

20. Admission of def't as to certain patents.

Evidence on the part of def't:

1. Depositions of H. L. Skinner & J. C. Savery, with Exhibits A, B, C, D, E, F, & G, thereto attached, (to wit, a copy of letter of Com'r Gen. L. O. to Sur. Gen., dated June 23, 1860; letters of said Com's of Oct. 11, 1861, & June 30, 1862; opinion of Att'y Gen. of U. S.; two letters of F. M. Davis, & receipt of J. B. Grinnell), and the official reports of the Secretary of the Interior; Com's Gen. Land Office and register of the State land office referred to in said depositions & put in evidence.

2. Depositions of John Bixby, (examined as a witness for both parties at the time of taking pl'ff's depositions) and Exhibit A thereto attached.

3. Papers certified from Gen. L. O. marked A, B, & C, to wit, copy of an affidavit to obtain scrip indemnity; special certificate (No. 80) for swamp land indemnity and stated account between the U. S. & the State of Iowa, for swamp land sold in Adams County.

206 It is agreed that the foregoing schedule refers to & embraces all the evidence submitted in the above-entitled cause, both by pl'ff & def't.

(S'g'd) FRANK M. DAVIS,
For Pl'ff.
J. A. HARVEY,
Of Counsel for Def't.

(Endorsed:) Filed Oct. 31st, 1874. George B. Corkhill, clerk.

207 And upon the trial of said cause the said complainant to sustain the issues on its part introduced and read in evidence certain documents and depositions of which the following are true copies.

208 *A list of the swamp and overflowed lands of Adams County & State of Iowa, together with the rate attached to the different sections, quarter sections, and quarter quarter sections of the same, 29th May, 1854.*

Township No. 71 N. of range No. 35 W. of 5th P. M.

Rate.	Part of sec.	Section.	Township.	Range.	No. acres.	Remarks.
3	S. E. ¼	31	71	35	160	Swamp.
3	E. ½ of S. W. ¼	31	71	35	80	Swamp.
2	N. W. ¼	31	71	35	160	Swamp & overflows to depth of 2 feet; part timber.
3	W. ½ of N. E. ¼	31	71	35	80	Swamp.
2	S. W. ¼	30	71	35	160	Swamp.
2	W. ½ of S. E. ¼	30	71	35	80	Swamp; a small part timber.
3	S. E. ¼ of N. W. ¼	30	71	35	40	Swamp.
2	N. E. ¼	30	71	35	160	Swamp.
2	W. ½ of N. W. ¼	29	71	35	80	Swamp & overflows to the depth of 3 feet; part timber.
3	N. E. ¼ of N. W. ¼	29	71	35	40	Swamp.
2	S. E. ¼ of S. E. ¼	19	71	35	40	Swamp & overflows to the depth of 3 feet; part timber.
2	W. ½ of S. W. ¼	20	71	35	80	Swamp & overflows to the depth of 3 feet; part timber.
3	S. E. ¼ of S. W. ¼	20	71	35	40	Swamp.
2	W. ½ of N. W. ¼	20	71	35	80	Swamp & overflows to the depth of 3 feet; part timber.
3	S. ½ of S. W. ¼	17	71	35	80	Swamp.
2	S. W. ¼ of S. E. ¼	17	71	35	40	Swamp & overflows to the depth of 2 feet; part timber.
3	N. ½ of S. E. ¼	17	71	35	80	Swamp.
3	N. E. ¼	17	71	35	160	Swamp.
2	209 W. ½ N. W. ¼	15	71	35	80	Swamp & overflows to the depth of 2 feet; part timber.
3	N. E. ¼ of N. W. ¼	15	71	35	40	Swamp.
3	E. ½ of S. W. ¼	10	71	35	80	Swamp.
3	S. E. ¼	10	71	35	160	Swamp.
3	S. E. ¼ of N. E. ¼	10	71	35	40	Swamp.
2	S. W. ¼	11	71	35	160	Swamp & overflows to the depth of 2 feet; part timber.
3	S. E. ¼ of N. W.	11	71	35	80	Swamp.
3	N. E. ¼ of N. W.	11	71	35	40	Swamp.
2	N. E. ¼	11	71	35	160	Swamp & overflows to the depth of 2 feet; part timber.
2	S. E. ¼	11	71	35	160	Swamp & overflows to the depth of 2 feet; part timber.
3	S. E. ¼ of S. E.	2	71	35	40	Swamp.
2	W. ½ of S. W. ¼	1	71	35	80	Swamp.
3	E. ½ of N. W. ¼	1	71	35		Swamp.
3	N. W. ¼ of N. E. ¼	1	71	35		Swamp.
2	N. W. ¼	12	71	35	160	Swamp.
2	S. ½ N. E.	12	71	35	80	Swamp.
2	N. W. of N. E.	12	71	35	40	Swamp.
2	E. ½ of S. E.	12	71	35	80	Swamp.

210 Township 72 north of range No. 35 W. of 5th P. M.

Rate.	Part of section.	Section.	Township.	Range.	No. of acres.	Remarks.
2	W. ½ of N. W. ¼	31	72	35	80	Overflows to the depth of 2 feet; part timber.
2	S. W. ¼	30	72	35	160	Swamp.
2	N. W. ¼	30	72	35	160	Swamp.
3	N. E. ¼	30	72	35	160	Swamp.
2	N. ½ of S. E. ¼	30	72	35	80	Swamp.
2	S. W. ¼ of S. E. ¼	30	72	35	40	Swamp.
3	N. W. ¼	29	72	35	160	Swamp; mostly prairie.
2	N. E. ¼	29	72	35	160	Swamp & overflows to the depth of 2 feet.
2	S. E. ¼	20	72	35	160	Swamp & overflows to the depth of 2 feet.
3	S. ½ of S. W. ¼	20	72	35	80	Swamp.
2	S. ½ of S. W. ¼	21	72	35	80	Swamp.
1	N. E. ¼ of S. W. ¼	21	72	35	40	Overflows to the depth of 2 feet; timber.
1	E. ½ of N. W. ¼	21	72	35	80	Overflows to the depth of 2 feet; timber.
1	N. E. ¼	21	72	35	160	Swamp & overflows to the depth of 2 feet; part timber.
3	W. ½ of S. E. ¼	21	72	35	80	Swamp.
2	N. W. ¼	22	72	35	160	Swamp.
2	S. W. ¼	15	72	35	160	Swamp.
2	S. ½ of N. W. ¼	15	72	35	80	Swamp & overflows to the depth of 2 feet; part timber.
2	N. ½ of S. E. ¼	15	72	35	80	Swamp.
1	N. W. ¼	14	72	35	160	Swamp & overflows to the depth of 2 feet; part timber.
2	N. E. ¼	15	72	35	160	Swamp.
2	N. ½ of S. W. ¼	14	72	35	80	Swamp.
2	N. ½ of N. E. ¼	14	72	35	80	Swamp.
2	S. E. ¼	11	72	35	160	Swamp & overflows to the depth of 2 feet.
2	N. W. ¼	12	72	35	160	Swamp.
3	W. ½ of S. W. ¼	12	72	35	80	Swamp.
2	S. W. ¼ of N. E. ¼	12	72	35	40	Swamp & overflows to the depth of 3 feet; part timber.
1	211 N. E. ¼ of N. E. ¼	12	72	35	40	Overflows to the depth of 4 feet; heavy timber.
2	S. E. ¼ of S. E. ¼	36	72	35	40	Swamp and overflows to the depth of 2 feet; part timber.

Township No. 71 N. of range No. 34 W. of the 5th P. M.

Rate.	Part of section.	Section.	Township.	Range.	No. of acres.	Remarks.
3	S. W. ¼ of N. W. ¼	7	71	34		Swamp.
2	W. ½ of S. W. ¼	7	71	34	80	Swamp & overflows to the depth of 2 feet; part timber.
1	S. ½ of S. ¼	7	71	34	80	Swamp & overflows to the depth of 2 feet; part timber.
2	N. E. ¼ of S. E.	7	71	34	40	Swamp.
2	N. E. ¼ of N. W. ¼	18	71	34	40	Swamp; part timber.
2	N. W. ¼ of N. E. ¼	18	71	34	40	Swamp; part timber.
2	N. ½ of S. W. ¼	8	71	34	80	Swamp & overflows to the depth of 2 feet.
2	N. W. ¼ of S. E. ¼	8	71	34	40	Swamp & overflows to the depth of 2 feet.
1	E. ½ of N. E. ¼	8	71	34	80	Swamp & overflows to the depth of 2 feet; part heavy timber.
3	S. E. ¼ of S. E. ¼	5	71	34	40	Swamp.
2	N. ½ of N. W. ¼	9	71	34	80	Swamp & overflows to the depth of 2 feet; part timber.
2	N. ½ of N. E. ¼	9	71	34	80	Swamp & overflows to the depth of 2 feet.
2	S. W. ¼ of S. W. ¼	4	71	34	40	Swamp & overflows to the depth of 2 feet.
3	S. E. ¼ of S. E. ¼	4	71	34	40	Swamp.
2	S. W. ¼ of S. W. ¼	3	71	34	40	Swamp; part timber; scattering.
2	N. E. ¼ of S. W. ¼	3	71	34	40	Swamp; part timber.
2	S. W. ¼ of N. E. ¼	3	71	34	40	Swamp; part timber.
2	N. E. ¼ of N. E. ¼	3	71	34	40	Swamp; part timber.
2	N. ½ N. W. ¼	2	71	34	80	Swamp; part timber.
3	N. W. ¼ of N. E. ¼	2	71	34	40	Swamp; part timber.

212 Township No. 72 N. of range 34, W. of 5th P. M.

Rate.	Part of section.	Section.		Range.	No. of acres.	Remarks.
3	S. W. ¼ of S. E. ¼	35	72	34	40	Swamp.
3	N. E. ¼ of S. E. ¼	35	72	34	40	Swamp.
3	S. ½ of N. E. ¼	35	72	34	80	Swamp.
3	N. ½ of S. W. ¼	36	72	34	80	Swamp.
3	S. ½ of N. W. ¼	36	72	34	80	Swamp.
3	N. E. ¼ of N. W. ¼	36	72	34	40	Swamp.
2	N. E. ¼	36	72	34	160	Swamp & overflows to the depth of 2 feet; part timber.
3	S. E. ¼ of S. E. ¼	25	72	34	40	Swamp.
2	S. ½ of S. W. ¼	31	72	34	80	Swamp & overflows to the depth of 2 feet.
3	N. E. ¼ of S. W. ¼	31	72	34	40	Swamp.
3	N. W. ¼ of N. E. ¼	31	72	34	40	Swamp.
3	E. ½ of S. E. ¼	30	72	34	80	Swamp.
1	N. W. ¼ of N. W. ¼	7	72	34	40	Overflows to the depth of 3 feet; heavy timber.
1	S. ½ of S. W. ¼	6	72	34	80	Overflows to the depth of 3 feet; heavy timber.
1	S. W. ¼ of S. E. ¼	6	72	34	40	Swamp & overflows to the depth of 2 feet; part timber.
2	N. E. ¼	6	72	34	160	Swamp & overflows to the depth of 2 feet; part timber.

213 Township No. 73 N. of range No. 34 W. of 5th P. M.

Rate.	Part of section.	Section.	Township.	Range.	No. of acres.	Remarks.
2	W. ½ of S. E. ¼	31	73	34	80	Swamp & overflows to the depth of 3 feet.
1	N. E. ¼ of S. E. ¼	31	73	34	40	Overflows to the depth 4 feet; heavy timber.
3	E. ½ of N. E. ¼	31	73	34	80	Swamp & overflows to the depth of 4 feet.
3	N. W. ¼ of N. W. ¼	32	73	34	40	Swamp & overflows to the depth of 4 feet.
2	S. ½ of S. W. ¼	29	73	34	80	Swamp & overflows to the depth of 4 feet.
3	N. E. ¼	28	73	34	160	Swamp & overflows to the depth of 2 feet.
3	N. ½ of N. W. ¼	27	73	34	80	Swamp & overflows to the depth of 3 feet.
3	N. E. ¼	27	73	34	160	Swamp.
1	S. E. ¼ of S. W. ¼	22	73	34	40	Overflows to the depth of four feet; heavy timber.
2	S. W. ¼ of S. E. ¼	22	73	34	40	Overflows to the depth of four feet; heavy timber.
1	N. W. ¼ of S. E. ¼	22	73	34	40	Overflows to the depth of 4 feet; heavy timber.
2	E. ½ of N. E. ¼	22	73	34	80	Overflows to the depth of 4 feet; part timber.
3	W. ½ of S. W. ¼	23	73	34	80	Swamp.
2	S. E. ¼ of S. E. ¼	15	73	34	40	Swamp.
3	S. ½ of S. W. ¼	14	73	34	80	Swamp.
3	W. ½ of S. E. ¼	14	73	34	80	Swamp.
1	E. ½ of N. E. ¼	14	73	34	80	Swamp & overflows to the depth of 3 feet; heavy timber.
3	S. E. ¼ of S. E. ¼	11	73	34	40	Swamp & overflows to the depth of 3 feet.
2	N. ½ of N. W. ¼	13	73	34	80	Swamp & overflows to the depth of 2 feet; part timber.
1	S. W. ¼ of N. W. ¼	13	73	34	40	Overflows to the depth of 4 feet; heavy timber.
3	N. ½ of N. E. ¼	13	73	34	80	Swamp.
2	S. ½ of S. W. ¼	12	73	34	80	Swamp & overflows to the depth of 2 feet; part timber.
2	S. E. ¼	12	73	34	160	Swamp & overflows to the depth of 2 feet; part timber.
3	E. ½ of N. E. ¼	12	73	34	80	Swamp & overflows to the depth of two feet.

214 Township No. 72 N. of range No. 33 W. of 5th P. M.

Rate.	Part of section.	Section.	Township.	Range.	No. of acres.	Remarks.
2	W. ½ of N. W. ¼	31	72	33	80	Swamp & overflows to the depth of 2 feet; part timber.
2	S. W. ¼	30	72	33	160	Swamp & overflows to the depth of 2 feet; part timber.
2	N. ½ of N. W. ¼	30	72	33	80	Swamp & overflows to the depth of 3 feet; part timber.
1	S. E. ¼ of N. W. ¼	30	72	33	40	Swamp & overflows to the depth of 3 feet; heavy timber.
3	N. W. ¼ of S. E. ¼	30	72	33	40	Swamp.
2	S. ½ of N. E. ¼	30	72	33	80	Swamp & overflows to the depth of 2 feet; part timber.
3	N. ½ of S. E. ¼	30	72	33	80	Swamp; part timber.
2	N. W. ¼	29	72	33	160	Swamp & overflows to the depth of 2 feet; part timber.
2	N. E. ¼	29	72	33	160	Swamp & overflows to the depth of 2 feet; part timber.
2	S. W. ¼ of S. W. ¼	21	72	33	40	Swamp & overflows to the depth of 2 feet; part timber.
3	N. W. ¼ of S. W. ¼	29	72	33	40	Swamp.
2	N. W. ¼	28	72	33	160	Swamp & overflows to the depth of 4 feet; part timber.
2	N. ½ of N. E.	28	72	33	80	Swamp & overflows to the depth of 4 feet; part timber.
2	N. W. ¼ of N. W. ¼	27	72	33	40	Swamp & overflows to the depth of 3 feet; part timber.
2	S. E. ¼ of N. W. ¼	27	72	33	40	Swamp & overflows to the depth of 4 feet; part timber.
2	S. W. ¼ of N. E. ¼	27	72	33	40	Swamp & overflows to the depth of 4 feet; part timber.
2	E. ½ of N. W. ¼	26	72	33	80	Swamp & overflows to the depth of 3 feet; part timber.
1	N. W. ¼ of N. E. ¼	26	72	33	40	Swamp & overflows to the depth of 4 feet; heavy timber.
1	E. ½ of S. E. ¼	23	72	33	80	Swamp & overflows to the depth of 3 feet; heavy timber.
3	S. W. ¼ of S. E. ¼	23	72	33	40	Swamp & overflows to the depth of 4 feet.
3	E. ½ of N. E. ¼	23	72	33	80	Swamp & overflows to the depth of 4 feet.
2	W. ½ of N. W. ¼	24	72	33	80	Swamp & overflows to the depth of 4 feet; part heavy timber.
2	W. ½ of S. W. ¼	13	72	33	80	Swamp & overflows to the depth of 4 feet; part timber.
3	N. E. ¼ of S. W. ¼	13	72	33	40	Swamp.
2	N. ½ of S. E. ¼	13	72	33	80	Swamp & overflows to the depth of 3 feet; part timber.
3	S. E. ¼ of N. E. ¼	13	72	33	40	Swamp.

215 Township No. 73 N. of range No. 33 W. of 5th P. M.

Rate.	Part of section.	Section.	Township.	Range.	No. of acres.	Remarks.
3	W. ½ of S. W. ¼	7	73	33	80	Swamp & overflows to the depth of 2 feet.
3	W. ½ of N. W. ¼	7	73	33	80	Swamp & overflows to the depth of 2 feet.
3	N. E. ¼ of N. W. ¼	7	73	33	40	Swamp & overflows to the depth of 2 feet.
2	N. W. ¼ of N. E. ¼	7	73	33	40	Overflows to the depth of 2 feet; part timber.
3	S. ½ of S. W. ¼	6	73	33	.....	Swamp & overflows to the depth of 2 feet.
2	S. ½ of S. E. ¼	6	73	33	80	Swamp & overflows to the depth of 2 feet; part timber.
1	N. E. ¼ of S. E. ¼	6	73	33	40	Overflows to the depth of 3 feet; heavy timber.
2	E. ½ of N. E.	6	73	33	.....	Swamp & overflows to the depth of 2 feet; part timber.
3	N. W. ¼ of N. W. ¼	5	73	33	40	Swamp.

Township 72 N. of range No. 32 W. of 5th P. M.

Rate.	Part of section.	Section.	Township.	Range.	No. of acres.	Remarks.
2	N. W. ¼	18	72	32	160	Swamp & overflows to the depth of 2 feet; part timber.
2	S. ½ of N. E. ¼	18	72	32	80	Swamp & overflows to the depth of 2 feet; part timber.
3	N. E. ¼ of N. E. ¼	18	72	32	40	Swamp.
3	N. W. ¼ of N. W. ¼	17	72	32	40	Swamp & overflows to the depth of 3 feet.
3	S. E. ¼ of S. W. ¼	8	72	32	40	Swamp & overflows to the depth of 3 feet.
3	N. ½ of S. E. ¼	8	72	32	80	Swamp & overflows to the depth of 3 feet.
3	S. E. ¼ of N. E. ¼	8	72	32	40	Swamp & overflows to the depth of 2 feet.
3	S. W. ¼ of N. W. ¼	9	72	32	40	Swamp & overflows to the depth of 2 feet.
3	N. E. ¼ of N. W. ¼	9	72	32	40	Swamp & overflows to the depth of 3 feet.
2	E. ½ of S. W. ¼	4	72	32	80	Swamp & overflows to the depth of 2 feet; part timber.
1	E. ½ of N. W. ¼	4	72	32	80	Swamp & overflows to the depth of 2 feet; heavy timber.
2	N. W. ¼ of N. E. ¼	4	72	33	40	Swamp & overflows to the depth of 2 feet; part timber.
3	E. ½ of S. W. ¼	33	73	33	80	Swamp.
2	W. ½ of S. E. ¼	33	73	32	80	Swamp; part timber.
3	S. W. ¼ of N. E. ¼	33	72	32	40	Swamp.

216 I hereby certify that the foregoing list of swamp lands is a true and correct copy of the original selection, this 29th of May, A. D. 1854.

(S'g'd) W. TRIPPETT,
County Surveyor.

STATE OF IOWA,
Adams County, ss:

I, J. P. Cummins, county auditor of Adams County, Iowa, do hereby certify that the foregoing marked pages 1 to 8, inclusive, is a true, perfect, and complete copy of the list of swamp and overflowed lands, with the rate, remarks, &c., also a true, perfect, and complete copy of the certificate of the county surveyor thereto, being a list of the said lands in Adams County, Iowa, as therein set forth, and as the same appears of record in my office.

Witness my hand and the seal of the board of supervisors of Adams, County, Iowa, this 24th day of November, 1871.

[SEAL.] (S'g'd) J. P. CUMMINS,
County Auditor of Adams County, Iowa.

Fee for copy, 2.50; fees for certificate & seal, 50 c'ts.

217 (Endorsed:) A. Adams County vs. American Emigrant Company. List of selected swamp lands. Package No. 1. Fees, $3.00; certificate, .50; total, $3.50. Filed Mar. 22, 1872. George B. Corkhill, clerk.

Description.	Sec	Town.	Range.	Acres.	Date of proof.	Claimants' names.	Owners' names.	Kind of instrument.	Date of instrument.	
N. W. ¼ N. E. ¼	2	71	34	40			Am. Em. Co	Deed	Sept. 7, 1862	
N. E. q'r S. W. q'r	8	"	"	"	July 2nd, 1855	H. Freshow	D. H. Burton	Bond	March 7, 1862	
N. W. q'r S. W. q'r	"	"	"	"	" " "	" "	" " "	"	" "	
N. E. q'r N. W. q'r	18	"	"	"			Am. Em. Co	Deed	Sept. 7, 1863	
N. W. q'r N. E. q'r	"	"	"	"			J. W. Morris			
N. W. q'r N. E. q'r	6	72	34	40			H. W. King	Deed		Paid in full.
N. E. q'r N. E. q'r	"	"	"	"			"	"		" " "
S. W. q'r N. E.	"	"	"	"				"		" " "
S. E. q'r S. E.	30	"	"	"			F. M. Davis	"		
N. E. q'r S. E.	"	"	"	"			F. M. Davis	"		
S. E. q'r N. W.	36	72	34	40			Am. Em. Co	Deed	Sept. 7, 1863	
S. W. q'r N. W.	"	"	"	"			" " "	"	" "	
N. E. q'r N. W.	"	"	"	"	Nov. 5, 1855	C. N. Marshall	C. N. Marshall	Bond	Mar. 8, 1862	Paid in full. Oct. 29, 1862.
N. E. N. E.	"	"	"	"	Aug. 23	Sam. Larimer	John McKinney	Deed		
N. W. N. E.	"	"	"	"	" "	" "	" "	"		
S. E. N. E.	"	"	"	"	" "	" "	" "	"		
S. W. N. E.	"	"	"	"	" "	" "	" "	"		
N. E. N. E.	12	73	34	40			F. M. Thompson	Deed		Paid in full. Oct. 15, 1862.
S. E. q'r N. E.	"	"	"	"			" " "	"		"
N. E. S. E.	"	"	"	"			John Morton	Bond	Mar. 10, 1862	
S. E. S. E.	"	"	"	"			Am. Em. Co	Deed	Sept. 7, 1863	
N. E. q'r S. W.	14	"	"	"	Sept. 24, 1855	Jacob L. Prickett	" " "	"	" "	
N. W. S. E.	"	"	"	"			R. Mansfield	Bond		
N. E. N. E.	"	"	"	"			John Morton	Bond	Mar. 10, 1862	
219 S. E. S. W.	22	73	34	40	Dec. 3, 1855	B. Strait	J. Alexander	Bond	Mar. 15, 1862	
N. W. S. E.	"	"	"	40	" " "	" "	" "	"	" "	
N. E. N. E.	28	"	"	40	Dec. 3, 1855	J. D. Peterson	Am. Em. Co	Deed	Sept. 7, 1863	
N. W. N. E.	"	"	"	40	" " "	" "	" " "	"	" "	
S. E. N. E.	"	"	"	40	Dec. 3, 1855	W. C. Morton	Chr's "	Bond	Mar. 15, 1862	
S. W. N. E.	"	"	"	40	" " "	" " "	" "	"	" "	
N. W. N. W.	32	"	"	40			Am. Em. Co	Deed	Sept. 7, 1863	
220 N. E. q'r S. E.	10	71	35	40			Am. Em. Co	Deed	Sept. 7, 1863	
N. W. S. E.	"	"	"	"			" " "	"	" "	
S. E. S. E.	"	"	"	"			" " "	"	" "	
S. W. S. E.	"	"	"	"			" " "	"	" "	
S. E. N. E.	"	"	"	"			" " "	"	" "	
S. W. N. W.	12	"	"	"			" " "	"	" "	
N. W. N. E.	"	"	"	"			J. N. Arthmr			
N. W. S. W.	20	"	"	"	Dec. 15, 1855	F. M. Davis	F. M. Davis	Deed	Mar. 7, 1862	
S. E. S. W.	"	"	"	"			Am. Em. Co	Deed	Sept. 7, 1863	
N. W. N. W.	"	"	"	"	Dec. 15, 1855	F. M. Davis	F. M. Davis	Deed	Mar. 7, 1862	
S. W. N. W.	"	"	"	"	" " "	" "	" " "	"	" "	
S. E. S. W.	30	"	"	"			Am. Em. Co	Deed	Sept. 7, 1863	

List of swamp-lands patented to the Co. of Adams. Transfers of swamp from county—Continued.

Description.	Sec.	Town.	Range.	Acres.	Date of proof.	Claimants' names.	Owners' names.	Kind of instrument.	Date of instrument.	
N. E. S. W.	30	71	35	40			Am. Em. Co.	Deed	Sept. 7, 1863	
N. W. S. E.	"	"	"	"			" " "	"	" " "	
S. E. N. W.	"	"	"	"			" " "	"	" " "	
N. W. N. E.	"	"	"	"			" " "	"	" " "	
S. W. N. E.	"	"	"	"			" " "	"	" " "	
N. W. N. W.	12	72	35	40	April 25, 1855	J. P. Osborn	E. Walters			Personal note.
N. E. N. W.	"	"	"	"			"	Deed		
S. W. N. W.	"	"	"	"	April 25, 1855	J. P. Osborn	E. Walters			Personal note.
S. E. N. W.	"	"	"	"			"	Deed		
S. W. S. W.	"	"	"	"	Sept. 8, 1855	Hattan Ulen	Delia Shephard	Bond	Dec. 9, 1861	
N. W. S. W.	"	"	"	"	" "	" "	" "	"		
S. W. N. W.	14	"	"	"	Sept. 24, 1855	John Barnett	John Barnett	Bond	Dec. 9, 1861	
221 N. E. S. E.	20	72	35	40			Am. Em. Co.	Deed	Sept. 7, 1868	
N. W. S. E.	"	"	"	"			" " "	"	" " "	
S. E. S. E.	"	"	"	"			" " "	"	" " "	
S. W. S. E.	"	"	"	"			" " "	"	" " "	
S. W. S. W.	"	"	"	"			" " "	"	" " "	
S. E. S. W.	"	"	"	"			" " "	"	" " "	
N. E. S. W.	30	72	"	"			" " "	"	" " "	
S. E. S. W.	"	"	"	"			" " "	"	" " "	
N. E. N. E.	"	"	"	"			" " "	"	" " "	
N. W. N. E.	"	"	"	"			" " "	"	" " "	
S. E. N. E.	"	"	"	"			" " "	"	" " "	
S. W. NE.	"	"	"	"			" " "	"	" " "	

Parts of section.	Sec.	T.	R.	Acres.	Date of proof.	Names of claimants.	Owners' names.	Kind of ins.	Date of instru.	
N. E. N. W	30	72	35	40			Am. Em. Co	Deed	Sept. 7, 1863	40 00.
N. W. N. W	"	"	"	"			" " "	"	" " "	26 30.
S. E. N. W	"	"	"	"			" " "	"	" " "	40 00.
S. W. N. W	"	"	"	"			" " "	"	" " "	26 30.
N. E. S. E	"	"	"	"			" " "	"	" " "	40 00.
N. W. S. E	"	"	"	"			" " "	"	" " "	40 00.
S. W. S. E	"	"	"	"			" " "	"	" " "	48 00.
S. E. S. W	8	72	32	40			Am. Em. Co.	Deed	Sept. 7, 1863	40 00.
N. E. S. E	"	"	"	"			" " "	"	" " "	40 00.
N. W. S. E	"	"	"	"	July 6, 1857	J. C. Whipple	" " "	"	" " "	40 00.
N. E. N. E	18	"	"	"			" " "	"	" " "	40 00.
N. W. N. W	"	"	"	"	July 6, 1857	J. C. Whipple	" " "	"	" " "	40 00.
N. E. N. W	"	"	"	"	" " "	" " "	Joseph Whipple	Deed	July 7, 1862	Paid in full. March, 1862,
S. E. N. W	"	"	"	"			Am. Em. Co	Deed	Sept. 7, 1863	4, 000.
N. E. N. W	28	72	33	40			Am. Em. Co	Deed	Sept. 7, 1863	4, 000.
S. E. N. W	"	"	"	"	Jan. 23, 1856	Joseph	J. B. Geiord	Bond	Nov. 23, 1861	
S. E. S. W	30	"	"	"			" " "	"	" " "	
N. E. N. W	"	"	"	"			Am. Em. Co	Deed	Sept. 7, 1863	40 00.
N. W. N. W	"	"	"	"	May 4, 1857	L. A. Olmstead	F. M. Davis	Deed	March 8, 1862	
N. W. N. E	"	"	"	"			W'm Krisinger	Bond	March 8, 1862	
N. E. S. E	"	"	"	"			J. B. Geiord	Bond	Nov. 23, 1861	
N. W. S. E	"	"	"	"			" " "	"	" " "	
S. E. S. W	6	73	33	40	Mar. 11, 1856	John W. Miller	E. M. Davis	Deed	Mar. 7, 1862	
S. W. S. W	"	"	"	"			" " "	"	" " "	
S. W. S. E	"	"	"	"			Am. Em. Co	Deed	Sept. 7, 1863	40 00.
N. E. N. E	"	"	"	"			" " "	"	" " "	40 00.

Part of section.	Sec.	T.	R.	Acres.	Hundre'ths.	Date of pat. Years	Mon.	Ds.	Names of pre-emptor.	Improvements.	To whom deeded.	Date of deed.	Price per acre.	Total.	
													$ cts.	$ cts.	Cash.
N. W. ¼ N. W. ¼	17	72	32	40	.....	1867	Nov.	18							
S. W. ¼ N. E. ¼	33	73	32	40	.....	"	"	"	J. W. Miller ..	.....	A. C. Payne			50	
S. E. ¼ N. E. ¼	13	73	33	40											
N. W. ¼ S. E. ¼	"	"	"	40											
N. E. ¼ S. W. ¼	"	"	"	40											
S. W. ¼ S. W. ¼	"	"	"	40											
S. W. ¼ S. W. ¼	21	"	"	40											
N. E. ¼ N. E. ¼	23	"	"	40											
S. E ¼ N. E. ¼	"	"	"	40											
N. E. ¼ S. E. ¼	"	"	"	40											
S. W. ¼ N. E.	27	"	"	40											
S. W. ¼ N. E. ¼	29	"	"	40											
S. E. ¼ N. E. ¼	"	"	"	40											
N. E. ¼ N. W. ¼	"	"	"	40											
S. E. ¼ N. W. ¼	"	"	"	40											
S. W. ¼ N. W. ¼	"	"	"	40											
N. W. ¼ N. W. ¼	31	"	"	50	29										
N. E. ¼ N. W. ¼	7	73	33	40											
N. W. ¼ N. W. ¼	"	"	"	41	72	.....	.....		John K. Fees ..	Actual settlers.	Francis M. Thompson..	Feb. 7, 1870	1 25	52 15	Cash.
S. W. ¼ N. W. ¼	"	"	"	42	06										
N. W. ¼ S. W. ¼	"	"	"	42	29	.....	.....		John K. Fees ..	.....	John L. Thompson	Feb. 7th, 1870	1 25	52 85	c'ts. Cash.
S. W. ¼ S. W. ¼	"	"	"	42	57										
N. W. ¼ S. E. ¼	"	"	"	40											
S. E. ¼ S. E. ¼	11	73	34	40	.....	1869	Apr'l	9th							
N. E. ¼ N. E. ¼	3	71	34	37	36	1871	Jan.	9th							

List of indemnity-lands belonging to Adams County, Feb. 7th, A. D. 1870, to whom sold, price, & terms of sale.

Part of section.	Sec.	T.	R.	Acres.	Hun.	Date of patent.		Name of grantee.	Date of sale.	Price.	Am't.
										$ cts.	$ cts.
N. E. ¼ S. W. ¼	18	83	41	40	.....	Sept. 23, 1865	Crawford Co., Iowa	.....	.....	.....	.....
N. W. S. W	"	"	"	40	.....	" " "	" " "	.....	.....	.....	.....
S. E. S. W	"	"	"	40	.....	" " "	" " "	.....	.....	.....	.....
S. W. S. W	"	"	"	40	.....	" " "	" " "	.....	.....	.....	.....
N. W. ¼ S. W. ¼	31	"	"	51	54	" " "	" " "	.....	.....	.....	.....
S. W. S. W	"	"	"	.....	.....	" " "	" " "	.....	.....	.....	.....
N. ½ N. E. ¼	6	83	42	.....	.....	" " "	Monona County	.....	.....	.....	.....
N. ½ N. W	10	"	"	80	.....	" " "	" "	.....	.....	.....	.....
N. ½ N. E	"	"	"	80	.....	" " "	" "	.....	.....	.....	.....
W. ½ S. W	32	"	"	80	.....	" " "	" "	.....	.....	.....	.....
N. ½ N. W. ¼	2	82	43	.....	.....	" " "	" "	.....	.....	.....	.....
S. W. ¼ S. W. ¼	8	"	"	40	.....	" " "	" "	.....	.....	.....	.....
N. W. ¼ N. E. ¼	14	"	"	40	.....	" " "	" "	.....	.....	.....	.....
S. W. ¼ N. W. ¼	30	"	"	.....	.....	" " "	" "	.....	.....	.....	.....
S. E. ¼ S. W. ¼	18	88	32	40	.....	Nov. 29, 1867	Calhoun Co., Iowa	.....	.....	.....	.....
N. W. ¼	28	"	"	160	.....	" " "	" " "	.....	.....	.....	.....

225 STATE OF IOWA,
Adams County, ss:

I, J. P. Cummins, county auditor of Adams County, Iowa, do hereby certify that the foregoing seven pages, purporting to be a list of the swamp lands patented to the county of Adams as therein set forth, and the transfers of the same by the county as therein set forth, is a true, perfect, and complete copy of said list as above set forth, as the same appears of record in my office.

Witness my hand and the seal of the board of supervisors of said county, this 24th day of November, A. D. 1871.

[SEAL.] (S'g'd) J. P. CUMMINS.
County Auditor of Adams County, Iowa.

Fees for copy, $2.50; fees for certificate & seal, 50 c'ts.

226 (Endorsed:) B. Adams County vs. American Emigrant Company. Package No. 2. Plaintiff's record evidence. Copy of records of patented lands & lands sold and unsold. Fees, $3.50. Filed Mar. 22nd, 1872. George B. Corkhill, clerk.

227 The following appears on page 95 of the minute-book of the board of supervisors of Adams County, Iowa, for the year 1862:

A.

September session.—Third day.

Now comes F. C. D. McKay, agent of the Western Emigrant Society, and makes a proposition to purchase the swamp-land interest of Adams County for the sum of two thousand dollars.

On motion, the board accepted the proposition, and ordered that at the next October election there be a poll opened in the county submitting the contract to the people.

The following is the order of the board as it appears of page 97 of the above-named minute-book:

B.

September session.—Third day.

On motion, the clerk of the board is authorized and required to issue the proper election notice for the October election for all co. officers whose terms will have expired, and to fill vacancys which may occur; also, to carry into effect the vote of this board in relation to the sale of swamp land.

228 On motion, the minutes were read and approved. Adjourned.

JOHN BARNETT,
Ch. B. Supervisors.

The following appears on pages 98 and 99 of the above-named minute-book:

C.

October session.—First day.—Oct. 20th, 1862.

Now on this day comes the board of supervisors of Adams County,

Iowa, it being the regular day provided by law for the canvass of the vote of the general election of October, A. D. 1862, John Barnett in the chair, members present as follows:

Colony Township, S. H. Bugbee.
Carl " J. C. Robinson.
Washington " R. H. Schooling.
Douglas " John Barnett.
Quincy Township, P. K. Lawrence.
Queen City " H. A. Smur.
Jasper " H. L. Harlow.
Union " O. B. Case.
Nodaway "

The board now proceeded to examine the poll-books, and can-
229 vassed the votes of the county, when the result was ascertained to be as follows:

"There were 241 votes cast on the swamp-land contract, of which 161 were for the contract and 80 were against the contract. The said contract is therefore declared valid and of full force, and binding on the parties thereto."

Copied from abstract of votes by townships:

C.

Colony	16	
Carl	15	
Washington	27	5
Douglas	31	4
Quincy	43	2
Queen City	6	34
Union	10	
Jasper	11	
Nodaway	2	35
	161	80

230 The following appears on page 103 of the minute-book of the board of supervisors of Adams County for the year 1862:

D.

October session.—Second day.—Oct. 21st, 1862.

On motion, the following resolutions were adopted as the sense of this board:

1st. Resolved by the board of supervisors of Adams County, Iowa, That James C. Savery, esq., of Des Moines, Iowa, be, and is hereby, nominated to the governor of the State of Iowa as a suitable person for special agent for the State the swamp-land claims of the said county of Adams upon the general government, pursuant to the thirteenth section of an act of the general assembly entitled "An act to authorize the governor and board of county supervisors to appoint agents in regard to swamp-lands belonging to the State of Iowa, and defining their duties," approved April 8th, A. D. 1862; which appointment is respectfully requested, in order to expedite the settlement of such claims.

2d. Resolved, That the interest of the county of Adams will
231 be best promoted by the appointment of such special agent, rather than by the general agent provided by said act.

3d. Resolved, That the said county of Adams pay the cost and expense of such special agent and his compensation, and that he is authorized to receive the proceeds of such settlement and deliver the same to the board of supervisors of said county.

Adopted unanimously.

STATE OF IOWA,
Adams County:

I, J. P. Cummins, county auditor of Adams County, Iowa, hereby certify that the above and foregoing a' true and correct copies of the original records as fully as they now appear of record in my office, as follows: Exhibit marked "A" is a true record of the board of supervisors adopting the swamp-land contract; exhibit marked "B" is a true, full, and complete record of the submission of said contract to the people of the county at the Oct. election, A. D. 1862; exhibit marked "C" is a true, full, and complete record of the canvass of votes upon said contract.

232 I further certify that there are no other records or papers on file in my office, except as above set forth, relating to the foregoing subject; that no copy of said contract can be found among the records or papers of said county, and that no record appears showing what the contract was for that year; that in the year 1863 the record shows a copy of the contract stating that it was adopted the year previous; that the above and foregoing are all the records relating to the swamp-land contract, as above set forth.

Witness my hand and the seal of said county board of supervisors this 3d of January, A. D. 1872.

[SEAL.] J. P. CUMMINS,
County Auditor, Adams County, Iowa.

233 (Endorsed:) C. Adams County vs. American Emigrant Company. Package No. 3. Plaintiff's record evidence. A. Record of board making contract. B. Copy of all the record of submission. C. Record of the canvass of the vote. Appointment of Savery. Circuit court United States. Equity 168. Fees $1.15.

(Endorsed:) Filed Mar. 22, 1872. George B. Corkhill, clerk.

234 In the district court of the State of Iowa, in and for Page County

FRANK M. DAVIS
vs.
ADAMS COUNTY.

Among the pleadings and papers on file in the office of the clerk of said court and in the above-entitled cause is the following, to wit:

To the district court of Adams County, Iowa:

FRANK M. DAVIS
vs.
ADAMS COUNTY AND THE AMERICAN EMIgrant Co. } Petition.

(a) Your petitioner, Frank M. Davis, claims of the defendants, Adams County and the American Emigrant Company, a corporation doing

business as such under the laws of Iowa, a judgment for the sum of twenty-two hundred and two dollars, as money justly due from the defendants to plaintiff, for services as attorney, surveyor, and notary public, upon a parol contract, and states:

1st. That on the 10th day of September, A. D. 1860, plaintiff and the county of Adams, by W'm A. Shields, acting county judge, for and on behalf of said county, entered into a contract in substance as follows: That said plaintiff was to convey and prepare certain proofs to establish the swampy character of the entered swamp-land in Adams County, Iowa, to procure a return of indemnity money and scrip from the United States to the State of Iowa, for entered swamp lands in Adams County, Iowa. That plaintiff was to hire witnesses, survey all said lands, procure all the necessary proofs, and act as the attorney and agent of the county of Adams, to secure the safe and speedy possession and collection of such indemnity money and scrip and lands as the county could show itself entitled to under the laws of the United States and the State of Iowa, by the proofs petitioner was to prepare. That Adams County was to pay expenses of witnesses and all other expenses except the personal expenses of petitioner. That petitioner was to wait for his fees and expenses until the money, scrip, and lands were collected and paid over to the State of Iowa, and was, by the terms of said contract, to receive a fee of forty per cent. of all money and scrip and lands recovered or paid over or patented to the State upon proofs prepared by your petitioner, to be paid out of the indemnity money and scrip and land as the same should come into the possession or under the control of the said county.

That in pursuance of such contract the said county, by the said W'm A. Shields, executed and delivered to your petitioner the general power of attorney hereunto attached, marked "Exhibit A" and made part of this petition. Your petitioner alleges that he has performed his part of the said contract faithfully, and did in pursuance of said contract and under the power of attorney as set forth survey, examine, hire witnesses, and prepare proofs upon one hundred and ninety tracts of land, embracing about eight thousand dollars in cash and scrip, and about thirty-seven hundred acres of land, which services was performed in the summer of A. D. 1861. Your petitioner alleges that there has been paid over to the State of Iowa for use of said Adams County by the United States, and drawn by the agents of the said Adams County, seven hundred and forty-eight and 70-100 acres scrip at par value of nine hundred thirty-five dollars eighty-seven and ½ cents, and the sum of forty-three hundred and three and 40-100 dollars in cash. Your petitioner alleges that the scrip was paid from the United States and converted to the use of the said county prior to February 1st, 1864, and that about the first of July, 1864, petitioner demanded of the agent of the county his part of the said scrip, which was refused, and the said agent denied that
235 there was any scrip ever paid for the said county; that the money was paid over about or before the 1st of July, A. D. 1865, and that defendant converted the same to their own use, and now refuse to pay plaintiff anything.

Plaintiff claims as follows:

Claim on $935.87½ doll. value of scrip	$374 35
Interest from July 1st, 1864, at 6 per cent	37 43
Claim on cash, $4,303.44-100 dolls	1,721 37.5
Interest on cash from July 1st, 1865	68 85.4
Total	$2,202 01

Your petitioner alleges that he is entitled to the said sum as petitioner's per centum for fees upon the monies paid over; that petitioner has presented his claim to the board of supervisors of Adams County, Iowa, and his claim was rejected and disallowed. Your petitioner therefore prays judgment for the sum of twenty-two hundred and two dollars, and interest at 6 per cent. from the 14th day of March, A. D. 1866, until paid, against the said county, and costs of suit.

2d. Your petitioner further alleges that the American Emigrant Company has by their written agreement, a true copy of which is hereto annexed and made part hereof, marked "Exhibit Letter B," unconditionally assumed to liquidate the liabilities of the county of Adams to said lands and funds; that said company has refused to liquidate or pay the claim of petitioner, although they have been requested so to do, and refuse and neglect to pay petitioner. Petitioner therefore prays judgment for the said sum of twenty-two hundred and two dollars, with 6 per cent. interest from the 14th day of March, 1866, as stated above, and costs of suit expended.

3d. Your petitioner says he desires only one judgment upon the foregoing counts; that petitioner never agreed to accept the promise of the American Emigrant Company and discharge the county of Adams from its liability, nor put a greater or different issue upon your petitioner; that petitioner is willing to accept a judgment against the American Emigrant Company, provided the county of Adams shall not be discharged from its liability to petitioner in case the debt is not paid by said Emigrant Company within a reasonable time, and provided plaintiff's burden of proof is not enlarged; that plaintiff was not party nor privy to the contract set out in Exhibit B, but was absent from the county when such contract was made and completed.

FRANK M. DAVIS.

236 STATE OF IOWA,
Adams County, ss:

Frank M. Davis, being duly sworn, on oath says that he has read the foregoing petition and knows its contents, and that the statements made therein are all true, as he verily believes.

(Signed) FRANK M. DAVIS.

Sworn to and subscribed before me this 20th of March, A. D. 1866.

(Signed) JOHN BIXBY,
Clerk District Court.

On the back of said petition are the following endorsements, to wit: "Frank M. Davis. Adams County, American Emigrant Company. Petition. Case No. 275. Filed this 20th day of March, A. D. 1866. John Bixby, clerk dist. court. Filed Aug. 14th, 1866. Jacob Butler, clerk Page Co., Iowa."

STATE OF IOWA,
Page County:

I, W. W. Russell, clerk of the district court of the State of Iowa, within and for said county of Page, hereby certify that the above and foregoing is a full, true, and perfect transcript of the petition
237 (except the exhibits therein referred to and attached to the same) in the cause entitled Frank M. Davis *is* Adams County & American Emigrant Company, brought to said county of Page on change of

venue from Adams County, and disposed of at the March term, 1867, of our district court, as the same now remains on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Clarinda, Iowa, this sixth day of December, A. D. 1871.

[SEAL.] (Signed) W. W. RUSSELL, *Clerk.*

238 *Original notice.*

To Adams County and to the American Emigrant Company:

(b) Each of you are notified that on the 25th of March, A. D. 1866, there will be on file in the clerk's office of the district court of Adams County, Iowa, the petition of Frank M. Davis, claiming a judgment against you for twenty-two hundred and two dollars with 6 per cent. interest, as money due said petitioner upon contract for procuring swamp-land affidavits, for surveying, and for attorney's services in procuring swamp-land indemnity money and scrip in Adams Co., Iowa, upon contract with the county judge of said county, which contract the said American Emigrant Company has assumed to pay. For full particulars see petition. Now, unless you appear and defend before noon of the second day of the term of the next district court of Adams County, Iowa, to be begun and held at Quincy, in said co., on Monday, the 9th day of April, A. D. 1866, your default will be entered and judgment rendered thereon with costs.

FRANK M. DAVIS.

(c) Received the annexed notice on the 19th day of March, 1866, and on the same day I served the same on F. C. D. McKay, agent of the American Emigrant Company, by reading the same to his wife, M'r's F. C. D. McKay, a member of his family over fourteen years of age, and by delivering to her a true copy of the same, at his usual place of residence, in Des Moines Township, Polk County, Iowa, the said F. C. D. McKay not being found in my county. Fees, 80 cents. Paid.

NATH'L McCALLA,
Sheriff of Polk Co., Iowa,
By J. BAUSMAN, *Dep'ty.*

STATE OF IOWA,
Adams County, ss:

I, James Widner, clerk of the dist. court of the State of Iowa, in and for Adams Co., Iowa, do hereby certify that the within is a true copy of the original notice and return thereon in the cause wherein F. M. Davis was plaintiff and Adams County and the American Emigrant
239 Company were defendants, as the same remains on file in my office.

Witness my hands and the seal of the dist. court of said county hereto affixed this 25th day of Dec., A. D. 1871.

[SEAL.] (Signed) JAMES WIDNER,
Clerk Dist. Court.

FRANK M. DAVIS
vs.
ADAMS COUNTY & AMERICAN EMIGRANT COMPANY.

Original notice filed April 9th, 1866.
(Signed) JOHN BIXBY, *Clerk.*

F. M. DAVIS
vs.
ADAMS COUNTY & AMERICAN EMIGRANT COMpany.

Filed this 26th day of March, 1866.
Original notice.

JOHN BIXBY.

240 In the district court of the State of Iowa in and for Page County.

FRANK M. DAVIS
vs.
ADAMS COUNTY.

Among the pleadings and papers on file in the office of the clerk of said court and in the above-entitled cause, and attached to a transcript from the said district court in and for Adams County, duly certified by the clerk thereof and attested with his seal, is the following, to wit:

Adams Co. dist. c't.

FRANK M. DAVIS
vs.
ADAMS COUNTY & THE AMERICAN EMIGRANT Company.

The def't, Adams County, for itself, comes now and moves the court to dismiss this action as against this def't, for that this def't is improperly joined as a def't with the other def't, The American Emigrant Company, as appears from the petition of pl'ff, and hath no joint liability in this action with such other def't or other legal liability with such other def't.

C. E. MILLARD, *Att'y.*

241 On the back of which motion are the following endorsements, to wit: "Frank M. Davis vs. Adams Co. & Aid Co. No. 80. Motion to dismiss. Filed this 9th day of April, 1866. John Bixby. Overruled. C. E. Millard, att'y for ."

STATE OF IOWA,
Page County:

I, W. W. Russell, clerk of the district court of the State of Iowa, within and for said county of Page, hereby certify that the above and foregoing is a full, true, and perfect transcript of the motion as therein set out, as the same now remains on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Clarinda, Iowa, this 6th day of December, 1871.

[SEAL.] (Signed) W. W. RUSSELL, *Clerk.*

242 STATE OF IOWA,
Adams County:

Be it remembered that at a regular term of the district court of Adams County, Iowa, begun and holden on Monday, the 9th day of April, 1866, were present Hon. James G. Day, judge; C. E. Millard, district attorney;

John W. Stewart, sheriff; and John Bixby, clerk; whereupon the following business was had and done, to wit:

FRANK M. DAVIS
vs.
ADAMS COUNTY AND THE AMERICAN EMIGRANT Co. } No. 80.

(d) On this second day of the term, this cause coming up for decision upon the motion of the defendant, Adams County, to be dismissed, the same having been heretofore submitted to the court, pending the consideration the plaintiff doth come and dismiss his cause of action finally to the defendant, the American Emigrant Company, and therefore the court doth overrule the motion of Adams County to be dismissed, and it is ordered and adjudged by the court that this cause of action as against the American Emigrant Company, defendant, be, and the same is hereby, finally dismissed, and it is ordered and adjudged that the said defendant the American Emigrant Company have and recover from the plaintiff its costs in this action expended, taxed at dollars.

And now comes Adams County, the defendant herein, and files her motion to strike from the petition of pl'ff the second and third counts in his said petition. Whereupon the court sustains the motion.

And now comes the plaintiff herein and asks time to file a substituted petition, whereupon the court grants till to-morrow morning.

STATE OF IOWA,
Adams County, ss:

I, James Widner, clerk of the district court of the State of Iowa, in and for said county, do hereby certify that the foregoing is a true
243 transcript of the record in the above-entitled cause, as the same remains of record in my office.

In witness whereof I have hereto set my hand and affixed the seal of said court at Quincy this 11th day of December, A. D. 1871.

Fees, 75 cents.

[SEAL.] (Signed) JAMES WIDNER, *Clerk.*

244 In the district court of the State of Iowa, in and for Page County.

FRANK M. DAVIS
vs.
ADAMS COUNTY.

Among the pleadings and papers on file in the office of the clerk of said court and in the above-entitled cause, and attached to a transcript from the said district court in and for Adams County, duly certified by the clerk thereof, and attested with his seal, is the following, to wit:

Petition.

To the district court, Adams County, Iowa:

FRANK M. DAVIS
vs.
ADAMS COUNTY. } ss:

Your petitioner, Frank M. Davis, claims of the defendant, Adams

County, a judgment for the sum of twenty-two hundred and two dollars as money justly due him from the said defendant for services as attorney, surveyor, and notary public upon a parol contract, and states:

1st. That on the 10th day of September, A. D. 1860, plaintiff
245 and the County of Adams, by W'm A. Shields, acting county judge for and on behalf of said county, entered into a contract in substance as follows: That said plaintiff was to survey and prepare certain proofs to establish the swamp character of the entered swamp lands in Adams County, Iowa, to procure a return of indemnity money and scrip from the United States to the State of Iowa for entered swamp lands in Adams County, Iowa, and to survey and prepare proofs of the swamp character of certain land claimed to be swamp in the odd sections, which lands were also claimed by the Burlington and Missouri River Railroad, in order that a contesting trial could be had before the officers of the United States as to who had the right to said land in odd sections.

That plaintiff, by said contract to hire witnesses, survey all said lands, procure all the necessary proofs, and act as the attorney and agent of the County of Adams to secure the safe and speedy
246 possession and collection of such indemnity money and scrip and lands as the county could show itself entitled to under the laws of the United States and the State of Iowa by the proofs petitioner was to prepare. That Adams county was to pay expenses of witnesses and all other expenses except the personal expense of petitioner.

That petitioner was to wait for his fees and expenses until the money, scrip, and lands were collected and paid over to the State of Iowa, and was by the terms of said contract to receive a fee of forty per cent. out of all moneys and scrip recovered or paid over or patented to the State upon proofs prepared by your petitioner, to be paid out of the indemnity money, scrip, and land as the same should come into the possession or under the control of the said county.

That in pursuance of such contract the said county, by the
247 said William A. Shields, executed and delivered to your petitioner the general power of attorney hereto attached and marked "Exhibit A" and made a part of this plaintiff's petition.

Petitioner alledges that he has performed his part of said contract faithfully, and did, in pursuance of said contract, and under the power of attorney as set forth, survey, examine, hire witnesses, and prepare proofs upon one hundred and ninety tracts of land embracing about eight thousand dollars in cash & scrip, and about thirty-seven hundred acres of land, which service was performed in the summer of A. D. 1861.

Petitioner alledges that there has been paid over to the State of Iowa for the use of said Adams County, by the United States, and drawn by the agent of the said county of Adams, seven hundred forty-eight & $\frac{70}{100}$ acres scrip at face value of nine hundred and thirty-five & $\frac{87}{100}$, and the sum of forty-three hundred and three & $\frac{44}{100}$ dollars in cash.

248 Your petitioner alledges that scrip was paid from the United States and converted to the use of said county prior to the 1st day of February, 1864, and that about the first of July, 1864, petitioner demanded of the agent of the county his part of the said scrip, which was refused, and the said agent denied that there was any scrip ever paid for or to the said county. That the money was paid over to said county about or before July 1st, 1865, and that defendant converted the same to its own use, and now refuses to pay plaintiff any part thereof.

Plaintiff claims as follows:

Claim on $935.87½ *dollars* value of scrip	$374 35
Interest from July 1st, 1864, at six per cent	$37 43
Claim on cash $4,303.44 *dollars*	$1,721 37½
Interest on cash from July 1st, 1865	$68 85½
Total	$2,202 01

Your petitioner alledges that he is entitled to the said sum from defendant as his percentum for fees upon the moneys paid over. That he has presented his claim to the board of supervisors *of supervisors*
249 of Adams County, Iowa, and his claim was reported and disallowed. Your petitioner therefore prays judgment for the sum of twenty-two hundred & two dollars and interest at 6 per cent. from the 14th day of March, A. D. 1866, until paid, against said defendant, and for his costs of suit.

(S'g'd) FRANK M. DAVIS,
Plaintiff.

EXHIBIT A.

Know all men by these presents that I, William A. Shields, county judge of Adams County, Iowa, for and on behalf of said county, have this day appointed Frank M. Davis, a notary public in our said county, the true agent and attorney for the following purposes, to wit: In relation to the swamp lands of said county to take affidavits and in any lawful manner to prove the character of swamp lands in this county, according to instructions given with this power, to secure a return
250 of purchase-money and land-warrants located on swamp in Adams County by the United States after the passage of the act of 28th September, A. D. 1850, and prior to the date of selecting and approving saids lands in Adams County, and the said Frank M. Davis is authorized to do all other lawful acts on behalf of said county to secure the speedy possession and collection *and collection* of said money and warrants.

Witness my hand and the seal of said county this 10 day of September, A. D. 1860.

[SEAL.] (S'g'd) W'M A. SHIELDS,
County Judge.

QUINCY, *Sept.* 10, 1860.

I hereby accept the within appointment, and agree to discharge the trust committed faithfully and to the best of my ability.

(S'g'd) FRANK M. DAVIS.

251 STATE OF IOWA,
Adams County:

I, Frank M. Davis, being duly sworn, say that the matters and things set forth in the foregoing petition are true, as I verily believe, so help me God.

(S'g'd) FRANK M. DAVIS.

Subscribed and sworn to by Frank M. Davis this April 11th, 1866, before me.

Witness my hand and seal of office this day and date last hereinbefore named.

[SEAL.] JOHN BIXBY,
Clerk Dist. Court of Adams County, Iowa.

On the back of said petition are the following endorsements, to wit, "Adams district court, April term, 1866. Frank M. Davis vs. Adams County. Substituted petition. No. . Filed this 10th day of April, A. D. 1866. John Bixby, clerk. Frank M. Davis."

252 STATE OF IOWA,
Page County:

I, W. W. Russell, clerk of the district court of the State of Iowa within and for said county of Page, hereby certify that the above and forgoing is a full, true and perfect transcript of a petition now on file in my office, as therein set out.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Clarinda, Iowa, this 6th day of December, A. D. 1871.

[SEAL.] (S'g'd) W. W. RUSSELL, *Clerk.*

253 In the district court of the State of Iowa in and for Page County.

FRANK M. DAVIS }
vs.
ADAMS COUNTY. }

Among the papers and pleadings on file in the office of the clerk of said court and in the above-entitled cause is the following, to wit:

In the district court of Page County, Iowa, March term, 1867.

FRANK M. DAVIS }
vs. } Amendment to petition.
ADAMS COUNTY. }

Comes now said plaintiff and by leave of court withdrawing the amendment heretofore filed as a 4th count to his petition filed this his amendment and asks that the same may be treated as the 4th count in his said petition, and for such amendment says:

4th. That by virtue of the authority conferred on him by the county judge of said Adams County, and in pursuance of the contract entered into as stated in said petition between the said county judge &
254 plaintiff, and in pursuance of the commission to him executed by said co. judge on the 10th day of Sept. 1860, (a copy of which is attached to said petition marked, "Exhibit A,") he proceeded to act as the attorney and agent, surveyor & notary public of said county in the prosecution of her claim against the United States for indemnity for all swamp & overflowed lands disposed of by the United States subsequent to the passage of the act of Sept. 28, 1850, and to which said county would be entitled under act of Congress of March 2, 1855, and the acts of the general assembly of this State relative to swamp land.

That as such agent, surveyor, notary public and attorney he proceeded to examine, survey & select the swamp lands, and report the same to the proper department of the United States Government, and took, prepared, procured & presented the necessary & proper evidence
255 as required by the proper authority of the General Government & State of Iowa, embracingthe testimony of a great number of witnesses and covering 190 different tracts of land, and sustaining the right of said county to indemnity therefor, and that by his said labor and professional services as such agent & attorney there was allowed, secured

& paid to said county, & for her use and benefit, the indemnity for the several tracts of lands embraced in the lists hereunto attached, marked "Exhibit X," & made a part hereof, being 115 40-acre tracts and amounting in the aggregate to about 4,300 acres, of which indemnity $748\frac{70}{100}$ acres was in scrip & $4,303.44 in money.

Plaintiff says that he was a long time engaged in the performance of said duties and was put to great trouble and expense in procuring witnesses and prosecuting said claims, and that his time, labor, ex-
256 pense and professional services as such agent and attorney are well & reasonably worth the sum of $2,202.00, which sum said def't, in consideration of the premises, undertook and promised to pay; that he rendered said services during the year 1860, 1861, & 1862, as stated in his said petition, and in the performance thereof as such agent, surveyor, notary public & att'y for said county he spent a great length of time, to wit, 106 days, and laid out & expended of his own money in defraying the necessary expenses in the prosecution of said business the sum of about $115.00. Pl'ff says that said claim of said county against the United States for swamp land indemnity by virtue of the several acts aforesaid amounted to about $12,625.00; that he took said claim of the co. judge of said county for collection, as shown in his petition, and that he was to do all things necessary to collect the same or so much thereof as he might be able to collect, and that
257 he rendered said services as aforesaid, and as set forth in his petition, and as authorized and required in said commission or power of att'y (a copy of which is attached to said petition) in the prosecution of said claim, and that the same were necessary for the collection thereof.

That by virtue of his said labor had professional services so rendered he has collected and caused to be paid to said county, and for her use, the s'd sum of $4,303 44, & 748.70 acres of indemnity scrip' or special certificates entitling her to that amount of land as aforesaid, as indemnity for the tracts of land described in said list hereunto attached prior to the commencement of this action, and he says said def't has received and appropriated to her own use the said proceeds of the said settlement of said claims against the United States, well knowing that the same were obtained by reason of the labor & professional services of pl'ff, rendered as aforesaid as the agent and attorney of said county,
258 and that his said labor & services were reasonably worth said sum of $2,202.00, and notwithstanding the facts aforesaid said def't, though often requested, refuses to pay the same.

Wherefore, pl'ff says that said defendant is justly indebted to him in said amount, with interest as claimed in his said petition. He therefore asks judgment as claimed in said petition, & that he asks judgment only on one of the groups of facts stated in s'd petition & in this amendment.

(S'g'd) MORLEDGE, STOCKTON, & HARVEY,
Att'ys for Pl'ff.

I, F. M. Davis, being duly sworn, on oath say that I am the plaintiff in the above-mentioned cause; that I have heard the foregoing petition read and know the contents therein stated, and verily believe the same to be true.

(S'g'd) FRANK M. DAVIS.

Sworn to & subscribed before me by F. M. Davis this 19th day of March, 1867.

[SEAL.] (S'g'd) JACOB BUTLER,
Cl'k Dist. Court.

259 Upon the back of said paper are the following endorsements, to wit: "Page Co. dist. court. No. 275. Frank M. Davis vs. Adams County. Substituted for the amendment to the petition. Filed March 19th, A. D. 1867. Jacob Butler, clerk. Morledge, Stockton, & Harvey, for pl'ff."

STATE OF IOWA,
Page County:

I, W. W. Russell, clerk of the district court of the State of Iowa in and for said county of Page, hereby certify that the above and foregoing is a full, true, and perfect transcript of the pleading therein demonstrated "Amendment to petition" (except Exhibit X, therein referred to and attached), and now on file in my office, as set forth in the caption hereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Cla'inda, Iowa, this 6th day of December, A. D. 1871.

[SEAL.] (S'g'd) W. W. RUSSELL, *Clerk.*

260 In the district court of the State of Iowa in and for Page County.

FRANK M. DAVIS
vs.
ADAMS COUNTY.

Among the pleadings and papers on file in the office of the clerk of said court and in the above-entitled cause, and attached to a transcript from the said district court in and for Adams County, duly certified by the clerk thereof and attested with the seal of said court, is the following answer, to wit:

District court of Adams County.

FRANK M. DAVIS
ag't
ADAMS COUNTY.

Now comes the def't, Adams County, and for answer to the pl'ff's petition says that of the alledged contract between pl'ff & W. A. Shields it hath no knowledge, and therefore doth deny the same in each and every particular allegation as set out & charged.

That as to the allegation that, pursuant to such parol contract,
261 the instrument in writing set out as Exhibit A to petition was executed by said Shields as county judge of Adams County, the def't hath no knowledge, and therefore doth deny the same in each and every particular & allegation.

That as to the allegations respecting the performance of any services & expenditure of any money by pl'ff by virtue of or under such alledged contract, this def't hath no knowledge sufficient whereon to form a belief of the truth thereof, & so doth deny the same.

That as to the allegations of the performance of the condition precedent & happening of the contingency on which pl'ff would be entitled to compensation, pursuant to his alledged contract, the def't hath no knowledge sufficient whereon to form a belief of the truth hereof, & so doth deny the same.

And as to the other allegation of said petition in the 1st count thereof, respecting the presentation of pl'ff's claim to the board of supervisors of said county and the refusal thereof at its last session, the def't
262 doth admit the pl'ff requested that a called & extra session of such board of supervisors was held on or about the 13th day of March, 1866, whereat said pl'ff did claim of def't the sum of $22.02; that such claim was then refused & disallowed by said board of supervisors.

2 COUNT.—For a further and separate answer to the pl'ff's petition, the def't doth state that the pl'ff & def't did have a full settlement of all the claims and demands of whatever kind said pl'ff had or pretended to have against def't at the January session, 1862, of its board of supervisors of said county, for services of whatever kind or moneys expended for on account of or concerning the swamp-lands and swamp-land funds, & claims theretofore held or owned by said def't; and therefore def't did grant to said pl'ff, as & for his full compensation for all such claims for services & expenditures, five hundred & eighty acres of land, which were then taken & received by pl'ff for & as such full & adequate compensation, & at the price of $1.25 per acre.

263 And def't states that the records of the proceedings of said board of supervisors on & about such settlement are imperfect as def't is informed & believes in relation both to the facts recited therein & the proper legal mode of making such grant of land to pl'ff and do not state the whole of the proceedings on such settlement nor all of the matters therein settled, but the same relating to pl'ff's present claim herein sued for was omitted by mistake from the record so far as by any reference thereto by name as under a contract with W. A. Shield as county judge. And def't doth state that any irregularity in the grant of said 580 acres of land to pl'ff in such full settlement or illegality therein hath been waived and abandoned upon condition of such acceptance by pl'ff of said land in such full and complete settlement, but reserving the right in law or equity to set aside such grant in case it should be
264 found by the court that pl'ff is not bound by such settlement & def't estopped by such imperfect record of the board of supervisors.

3RD COUNT.—And for a further and separate answer, the def't states that it is informed & believes, & doth so charge, that the pretended contract in parol set out by pl'ffs as made by pl'ff with s'd Shields, is & was wholly irregular, illegal, & nul as against this def't; that the said Shields had no right or authority to make any such contract as is set out & charged for or on behalf of def't; that no record thereof was ever made; that no such contract was made at a session of the county court of said county; that no right or authority existed in a county judge to contract by parol as charged. And def't further states that such pretended contract was wholly a landed by pl'ff, & the def't for a valuable consideration paid, did long thereafter sell & convey all its
265 right, title, & interest in and to its swamp lands & swamp-land int'ests to the American Emigrant Company, to wit, in the year 1862, and pl'ff did not then nor ever since, till recently, present or pretend to have any claim against def't for or on account of its said swamp lands; that def't never received any benefit, by virtue of pl'ff's said pretended contract, or receive any thing whatever of benefit or advantage therefor.

So def't asks judg't for costs.

By C. E. MILLARD, *Att'y.*

STATE OF IOWA,
Adams County, ss:

I, B. O. Stephenson, do, on oath, state I am chrm. of the board of supervisors of s'd county, & have heard read the foregoing ans'r, & the allegations thereof are, as I am informed & believe, true.
(S'g'd) B. O. STEPHENSON.

Subscribed & sworn to by B. O. Stephenson before me this 10th day of April, 1866.
[SEAL.] JOHN BIXBY,
Clerk Dist. Court.

266 Upon the back of said answer is the following, to wit: Frank M. Davis, Adams County. Answer. Filed this 11th day of April, 1866. John Bixby, C. E. Millard, att'y for defend't.

STATE OF IOWA,
Page County:

I, W. W. Russell, clerk of the district court of the State of Iowa, within and for said county of Page, hereby certify that the above and foregoing is a full, true, and perfect transcript of the answer now on file in my office in the cause therein referred to, and as set out in the caption hereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Clarinda, Iowa, this sixth day of December, A. D. one thousand eight hundred and seventy-one.
[SEAL.] (S'g'd) W. W. RUSSELL, *Clerk.*

267 In the district court of the State of Iowa in and for Page County.

FRANK M. DAVIS }
vs.
ADAMS COUNTY. }

Among the pleadings and papers on file in the office of the clerk of the district court of the State of Iowa in and for the county of Page and in the above-entitled cause is the following, to wit:

Answer to 4th count.

District court, March term, A. D. 1867.

STATE OF IOWA,
Page County:

F. M. DAVIS }
vs.
ADAMS COUNTY. }

Plaintiff's petition.

The defendant comes now, and answering 4th count of plaintiff's petition and denies each and every material allegation therein inconsistent with his answer to plaintiff's petition and not herein expressly admitted, and for more specific answer, denies that by virtue of the authority conferred on plaintiff by the county judge of Adams County

and in pursuance of the contract or of any contract alledged
268 to have been made by said defendant with plaintiff and in pursuance of any commission executed to him by the county judge of Adams County on the 10 day of September, 1860, the plaintiff as an agent for defendant, as a surveyor and notary public of said Adams County, proceeded to prosecute her claim against the United States for indemnity for all swamp lands disposed of by the United States which belonged to defendant. Denies that he was the agent of said county; that he had any authority to act therefor; that as an agent for said county, or as a surveyor and notary public employed by or acting for said county, he examined, surveyed, and selected the swamp lands and reported the same to the proper department of the United States Government.

That he took, prepared, procured, and presented the necessary and proper evidence as required by the proper authorities of the General Government & State of Iowa, embracing the testimony of a great
269 number of witnesses, and covering 170 different tracts of land and sustaining the right of said county to indemnity therefor, say:

That he performed no labor for or on behalf of said county by virtue of any agreement or contract with said county.

Denies that by his labor and professional services as an agent and attorney for said county, there was allowed, secured, and paid to said county, and for her use and benefit, the indemnity for any lands embraced in the list attached as an exhibit to plaintiff's petition, namely, 118 tracts, of 40 acres each, and amounting in the aggregate to 4,300 acres, of which indemnity $748\frac{70}{100}$ acres was scrip, and $4,303.44 was in money.

Denies that for and on behalf of said county he was long time in the performance of the duties as alleged; that he performed any labor or rendered any services as the agent or attorney for said county.

Denies that for and on behalf of said county, or at persistance
270 or by virtue of any authority, he expended money or labor in procuring witnesses and in prosecuting said claims; that he has expended money or labor, or professional services for defendant.

Denies that the services alleged by plaintiff to have been rendered for and on behalf of said county, were worth the sum of $2,202.00; that the defendant never undertook and promised to pay the same.

Denies that he rendered any services for defendant in the years 1860, 1861, and 1862, as stated in plaintiff's petition, and that in the performance of said labor as an agent, surveyor, or notary public, he spent 106 days and laid out and expended of his own money in defraying the necessary expenses in the prosecution of any business for or on behalf of defendant the sum of $115.00.

Denies that he took said claim of the county judge of said
271 county, namely, the claim of the county against the United States, and that any contract was made by the county judge; that the county judge had no right or authority to make any contract for and on behalf of said county, and that none was made by him with plaintiff for the collection of any claim against the United States, and that he rendered the services alleged by him for said county in pursuance of any contract.

Denies that his services or the services rendered were necessary for the collection of defendant's claim against the United States.

Denies that by virtue of his labor and professional services, there

was paid to said county any money whatever, or any indemnity scrip entitling her to any land.

Denies that defendant has appropriated to her own use any sum whatever procured by plaintiff, as the agent or attorney of said
272 county; defendant alleges that full payment for any and all services rendered defendant by plaintiff have been fully paid for and settled, as is fully set out in his original answer.

(S'g'd) MILLARD & MOON,
Att'ys for Def't.

On the back of which pleading is the following, to wit, "F. M. Davis vs. Adams County. Ans. to 4 count of petition. Filed March 20th, 1867. J. Butler, clerk. N. B. Moon."

Certificate to transcript.

STATE OF IOWA,
Page County, ss:

I, W. W. Russell, clerk of the district court of the State of Iowa, in and for sa'd county, do hereby certify that the foregoing is a true and perfect transcript of the paper in the above-entitled cause, entitled answer to 4th count of petition as fully as the same remains on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Clarinda, Iowa, this eighth day of December, A. D. 1871.

[SEAL.] W. W. RUSSELL, *Clerk.*

273 In the Page district court, March term, 1867.

FRANK M. DAVIS
vs.
ADAMS COUNTY.

In the above-entitled cause on the judgment docket is the following entry of satisfaction, viz:

Received this judgment in full as per receipt on file in words and figures following:

Received of S. W. Bugbee, clerk of board of supervisors, of Adams County, Iowa, twenty-four hundred and fifty-six dollars, debt, and sixty-five dollars, costs, in full of the within judgment, Jan. 9th, 1869.

(S'g'd) FRANK M. DAVIS,
By MORLEDGE, *Att'y.*

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Clarinda, Iowa, this 9th day of December, 1871.

[SEAL.] (S'g'd) W. W. RUSSELL, *Clerk.*

274 U. S. circuit court.

ADAMS COUNTY
vs.
AMERICAN EMIGRANT COMPANY. } Equity. No. 168.

Transcript of papers in case of Davis vs. Adams County.

1. Petition in cause.
2. Motion to dismiss.

3. Record of dismissal.
4. 2 amended petition.
5. 2 answer.
7. Trial & judgment.
8. Satisfaction.
Cost, 12.50.

275 *Copy of judgment.*

District court, Page County. March term, A. D. 1867, sixth day of said term, March 23d, 1867.

Present, Hon. James G. Day, judge, G. W. Burns, sheriff, Jacob Butler, clerk.

FRANK M. DAVIS }
vs.
ADAMS COUNTY. }

Now at this time the jury herein having heard the arguments of the counsel, and the instructions of the court, retire in charge of an officer of the court to consider of their verdict, and after due deliberation return into court, and all being present, upon their oaths say, we, the jury, find for the plaintiff, and allow him his twenty-two hundred dollars. And now at this time comes the defendant and moves the court in arrest of judgment, and files their motion for a new trial, and said motion coming up for hearing, and the court being advised in the premises, overrules said motion, and orders judgment rendered on the verdict. It is therefore considered by the court that the plaintiff, Frank M. Davis, have and recover of the defendant, Adams County, Iowa, the sum of twenty-two hundred dollars, with 6 per cent interest per annum, as his debt, and the further sum of sixty-four and 40-100 dollars as his costs in this suit, together with the further sum of forty dollars as an allowance to A. R. Anderson, by agreement of parties appointed by the court to take down the testimony, and execution issue therefor. To all of which rulings and judgment of the court, the said defendant, by his attorney, objects, and the court, by agreement of both parties, granteth said defendant until the sitting of the district court in Montgomery County, Iowa, in May, 1867, to prepare and perfect his bill of exceptions.

Certificate to transcript.

STATE OF IOWA,
Page County, ss:

I, W. W. Russell, clerk of the district court of the State of Iowa, in and for said county, do hereby certify that the foregoing is a true and perfect transcript of the final record of judgment in the above-entitled cause as fully as the same remains of record in my office.

In witness whereof I have hereunto set my hand and affixed the
276 seal of said court, at Clarinda, Iowa, this 8th day of December, A. D. 1871.

[SEAL.] (S'g'd) W. W. RUSSELL, *Clerk.*

(Endorsed:) D. Package No. 4. Frank M. Davis vs. Adams County & American Emigrant Company. Certified copies. 1st. Petitions. 2. Original notice and service thereon. 3. Substitution pet. 4. Answer.

5. Amended petition. 6. Answer to amendment. 7th. Record entries. 8th. Judgment. 9. Satisfaction. Adams County vs. American Emigrant Company. United States circuit court. Equity, 168. Cost, 13 dollars. Filed Mar. 22, 1872. George B. Corkhill, clerk.

277 (b) Resolved, By the board of supervisors of Adams County, Iowa, that in the name and for the use of Adams County, Iowa, formal demand be and is hereby made by the board of supervisors of said county, of the American Emigrant Company, of J. C. Savery, their general agent for the State of Iowa, at his office at Des Moines, Iowa, for the sum of two thousand seven hundred and thirty-five dollars and sixty cents ($2,735 60-100), the amount of judgment, costs, &c., paid by Adams County in the suit wherein Frank M. Davis was plaintiff, and Adams County, Iowa, defendant, in which judgment was rendered in Page County, Iowa, district court, March 23d, 1867, which money was paid for the use of the said Emigrant Company, and we hereby demand and request the immediate and unconditional payment of said sum of money to Robert Hunter, who is the bearer of this resolution, who is hereby appointed a special committee of this board to proceed to Des Moines, Iowa, present certified copy of this resolution, receive and receipt for said money, and report to the board.

I hereby certify that the foregoing is a true copy of the resolution adopted unanimously by the board of supervisors of Adams County, Iowa, on the 7th day of January, A. D. 1869, as the same appears recorded in the records of the proceedings of said board, now in my office.

Witness my hand and the seal of the board of supervisors of said county, this 8th day of January, A. D. 1869.

SEAL OF THE BOARD OF SUPERVISORS OF ADAMS CO., IOWA.

S. H. BUGBEE,
County Auditor, Adams County, Iowa.

(c) M'r W. A. Colton is hereby authorized to present this paper and receipt according to its conditions.

Des Moines, Iowa, Jan. 15, 1869.

R. HUNTER.

DES MOINES, IOWA, *January 22d*, 1869.

(d) I presented this demand to M'r J. C. Savery at his office this day, and his reply was that the company did not owe Adams County any money, and he would not recognize the demand.

W. A. COLTON.

ADAMS COUNTY
vs.
AMERICAN EMIGRANT CO.

(e) It is stipulated that the endorsement of M'r Colton is true, and may be read in evidence as though duly sworn to by him on deposition taken.

NOURSE & KAUFFMAN,
Att'ys for Def't.

Filed with the clerk of the board of supervisors Jan. 30th, 1869.

278 DES MOINES, *Sept. 1st*, 1863.

To the honorable Board of Supervisors of the County of Adams:

GENTLEMEN: The American Emigrant Company has entered already with great earnestness upon its system for procuring emigrants and settlers to occupy the lands purchased of your and of other counties, and the promise of success to these efforts is such that no time can be lost on the part of the company in perfecting its titles and getting its lands ready for sale to its purchasers.

It is especially desirable to the company that in those counties where in all probability its first settlements will be made, suitable conveyances should be made by the counties to the company at once, and with the least possible delay.

I have, therefore, had prepared, under the direction of our counselor, such a conveyance as is necessary to convey the land to your county, under the peculiar requirements of the statutes of this State directing the mode of conveyance in such cases. Such conveyance I herewith send you, embracing all the swamp lands of your co., the numbers of which have been obtained of the register of the State land-office, and are believed to be entirely correct, and in order to prevent the conveyance to us of any lands to which we are not entitled.

You will find in the deeds sent ample reservations, so that no lands not sold to us by you can possibly be conveyed by this deed, although they should be contained in the list of lands in the body of the deed.

I wish to call your attention particularly to the fact that the deed I send is a quitclaim deed, and also contains such reserves as will fully protect the rights of both parties (the county and the company) in making this conveyance; and I may add that I have been careful to draw it in all particulars so as to save the county from any covenant or condition you could have any objection to assuming. I cannot doubt you will find it in all respects very satisfactory.

As the papers bear date the seventh day of September, I hope the business may be done on that day. If that cannot be done, those dates may be changed. Some blanks in dates may be left for you to fill. Our counsel finds the laws of this State to be peculiar in regard to such conveyances. Those laws will make it necessary that you enter on your record the whole package I send you enclosed, commencing with "whereas," on the ninth line from the top of the first page, and entering the whole from that word through to the end, including all the numbers and descriptions of the lands. Also, that the supervisors and clerks sign the deed in the places provided for that purpose, and all acknowledge it before a notary public of the county, justice of the peace, or county judge, which officer will insert his official title in the certificate of acknowledgment, and will also insert the names of each of the supervisors and the clerk in such certificate, and will affix his seal thereto. This acknowledgment must not be taken by your clerk.

If one of your number will move to adopt the preamble and resolutions contained in the package I send you, and which embrace the deed, and such motion prevails, you have done all you need to do, but the vote must be taken by the yeas and nays. The clerk can do
279 the rest; that is, fill the blanks, if any are left, in the papers I send. Enter the whole in the minutes. Take the vote by yeas and nays, recording it as shown in the papers I send.

When this is done, the clerk and supervisors sign and acknowledge the deed, and the clerk fills the blanks relating to the vote, and makes

the certificate under his hand and seal, which is at the very end of the papers I send.

You will observe, the deed is not to be delivered to us until the mortgage is made to secure your county in the fullest manner for the performance of all the conditions contained in the agreement made between us. The trustees of the company reside in Hartford. M'r Hammond is the president, M'r Hooker is the treasurer, and M'r Welch a director of the American Emigrant Company.

As soon as possible after we are advised of your action in this matter we shall make and deliver the mortgage.

It is very desirable, if it can be done, that it should be accomplished previous to your October meeting, at which time we shall wish to make some further arrangements with you having reference to the convenience of settlers as they may come in, and to partial payments upon the mortgage from time to time, so that the lands of such settlers as pay for them may at once be discharged from its lien and their title be unincumbered. Hoping this will all appear as satisfactory to you as it seems to me to be, I am, very respectfully,

Your obedient servant,

F. C. D. McKAY,
General Agent American Emigrant Co.

(Endorsed:) Adams County vs. American Emigrant Company. Plaintiff's evidence, package No. 5. 1. Original demand. Colton's report; stipulation thereon. 2nd. Letter of McKay to board of supervisors, Sept. 7, 1862. E. Fees, $.50. Also filed Mar. 22, 1872. George B. Corkhill, clerk.

280 A.

Swamp-land resolution.

January session, 1869. Fourth day.

On motion, the following resolution is adopted:

Resolved by the board of supervisors of Adams County, Iowa, That in the name and for the use of Adams County, Iowa, formal demand be and is hereby made by the board of supervisors of Adams County, Iowa, of the American Emigrant Company, of J. C. Savery, their general agent for the State of Iowa, at his office in Des Moines, for the sum of two thousand seven hundred and thirty-five dollars and sixty cents ($2,735.60), the amount of judgments, costs, &c., paid by Adams County in the suit wherein Frank M. Davis was plaintiff, and Adams County, Iowa, defendant, in which judgment was rendered in the Page County, Iowa, district court, March 23d, 1867, which money was paid for the use of the said emigrant company; and hereby demand and require the immediate and unconditional payment of said sum of money to the bearer of this resolution, who is hereby appointed a special committee of
281 this board to proceed to Des Moines, Iowa, present a certified copy of this resolution, receive and receipt for said money, and report to the board.

And now, Robert Hunter is appointed the special committee as contemplated in the above resolution, with instructions to proceed at once to Des Moines on said business, and is instructed to report his doings in the premises to this board on the 22d day of January, 1869, to which time it is, on motion, ordered that when this board adjourned it adjourn to meet on that day, to wit, Jan'y 22d, 1869.

On motion, the auditor is ordered to issue a warrant on the swamp-land fund for the sum of twenty (20) dollars in favor of R. Hunter, for expenses pursuant to the above appointment.

282 *Report of Hunter.*

January adjourned session. Jan'y 22, 1869.

Now comes Supervisor J. M. Bixler and makes a verbal report for Supervisor Hunter to the effect that he has been to Des Moines as directed at the last meeting, but failed to obtain a conference with the authorized agent of the American Emigrant Company in consequence of his being absent from the State, and had therefore no definite answer from the said company to report.

Swamp-land resolution.

Adjourned session, Jan'y 30th, 1869.

On motion, the following resolution was adopted:

Resolved, That a committee of three be appointed by the board to take under consideration the claim of Adams County against the American Emigrant Company, and proceed as deemed by them just and proper in the settlement of the same, with authority to notify the county auditor to issue a call for a meeting of the board of supervisors if a
283 necessity for such a meeting be in their opinion required.

When, on motion, H. G. Ankeny, John Niell, and W. D. Thompson are appointed as such committee.

Special session, April 21st, 1869.

Now comes John Niell and H. G. Ankeny, for the committee appointed to try and effect a settlement with the American Emigrant Company, and submit their verbal report, to wit: That two of the committee went to Des Moines on said business, and not finding J. C. Savery, the agent of said company, at home, they made arrangements with Skinner, acting agent in the absence of J. C. Savery, which they at the time were led to suppose would result in an amicable settlement, and that the said company had failed to complete the arrangement as agreed upon.

On motion, the report is accepted and the committee discharged.

284 B.

Special meeting, April, 1869. Tuesday morning, April 22nd, 1869.

Board met pursuant to adjournment—members present same as yesterday except O. B. Case absent—when the minutes of yesterday's proceedings were read and approved.

And now, on motion, the following resolution is unanymously adopted, to wit:

Whereas the board of supervisors of Adams County, Iowa, did on the 3*t*d of September, A. D. 1862, enter into a contract with the American Emigrant Company, which contract was submitted for the approval of the people at the October election, A. D. 1862, and ratified; which con-

tract is recorded in the journal of proceedings of the board on pages 129, 130, 131; which contract was to dispose to the said American Emigrant Company all swamp lands and funds owned or held by said county, amounting at that date to the cash value of over fifteen thousand
285 dollars, for the trivial sum of two thousand dollars, upon conditions therein specified;

And whereas it was fals'ly represented to the board of supervisors at the date of entering into said contract, and to the people of the county prior to and at the date of the October election aforesaid, that the indemnity funds and lands included in the contract would not and could not be recovered, and that the county was only selling two thousand acres of land at one dollar per acre, to be drained, settled, and improved by intelligent emigrants sent into the county to improve and build up the county, all of which has failed and proved false; which false representations were relied upon by the board of supervisors and people in making said contract;

And whereas the board of supervisors of said county did, on the 7th day of September, A. D. 1864, pass a resolution extending rights conferred in said contract by resolution recorded in the journal of
286 proceedings of that date on page 178;

And whereas by the terms of said contract the said emigrant company assumed the costs of draining and improvement of the swamp land.

And whereas the said emigrant company have utterly failed in all these stipulations of their part of the contract important in the said contract to Adams County, whereby the benefit of said contract became and is wholly void, useless, and valueless to said county, thereby wholly destroying every advantage which said county reasonably expected to derive from said contract in refusing and neglecting to drain the lands and put them into cultivation as contracted.

2nd. In suffering the county to remain liable for such drainage in violation of the contract.

3rd. In failing to send settlers into the county as contracted thereby, and retarding the settlement and improvement of the county.

4th. In refusing to comply with the reasonable and just demands
287 of the board of supervisors as contracted.

5th. In causing and suffering the county to have the care and costs of vexatious and expensive litigation concerning just claims against said lands and funds in violation of the contract.

6th. In refusing to renumerate the county for actual costs, expenses, and attorney fee in litigation carried on at their request and for their benefit in the name of the county.

7th. In refusing to respect the claims of F. M. Davis in violation of the contract to do so, whereby the county has been compelled to pay twenty-seven hundred dollars in judgment, costs, and attorney fees by reason of their failure, being seven hundred dollars more than the entire amount of the original contract, refunded to their account, which they now refuse to pay although often demanded and a reasonable time allowed for performance.

And whereas the board of supervisors firmly believe the said
288 contract was procured on the part of the American Emigrant Company through fraud, misrepresentation, and concealment of facts then in their knowledge, of which the then board of supervisors and people were ignorant.

And whereas the said emigrant company has been notified and requested to respect the right of claimants and regard the interests of

the county in such contract, payment demanded, performance required, all of which have been refused and neglected, and the said company have realized large sums of money out of said contract which they represented at time of contract to be utterly lost beyond all hope of recovery, and persist in holding said money and refusing to pay just claims against such funds, and by such neglect destroying every advantage derived by said contract in the county, and persist to claim all the benefits of such wrongful contract and regard none of its obligations:

Now, therefore, be it resolved by the board of supervisors of
289 Adams County, Iowa, in the name and for the use of said county and the people thereof, That the said contract and extension and all other resolutions or contracts confer'ing favor or rights upon the said American Emigrant Company be, and are hereby, declared rescinded, null, and void, and of no binding force in law or equity and morals upon said county, & said county hereby declares its election to rescind all acts heretofore done and contracts heretofore made, and place the parties in original position as if said contract never had been made; and we do hereby refuse to go any further in the performance of said contract, to make deeds of land, or do any other acts towards completing said contract or any part thereof; and we do hereby appoint Frank M. Davis as our attorney and agent to bring suits to recover all indemnity money, lands, and rights whatever confered, transmitted to, or obtained by said American Emigrant Company under or by vertue of said
290 contract and to recover all rights of costs and attorney's fee expended by the county in adhearing to and supporting said emigrant company in actions heretofore pending, to rescind and cancel deeds, contracts, powers of attorney, and all other writings giving said American Emigrant Company any rights to lands, fund, or scrip, that the county may be placed as if said contract never were made, as near as possible.

291 STATE OF IOWA,
Adams County:

I, J. P. Cummins, county auditor of Adams County, Iowa, do hereby certify that the above and foregoing are true, full, and perfect copies of the records of the board of supervisors of said county as they now appear of record in my office, as follows:

Exhibit marked "A" is a true copy of the record and resolutions demanding performance of the swamp land contract, reports of committees, and action of the board of supervisors incident thereto.

Exhibit marked "B" is a true and perfect copy of the original resolution rescinding the swamp-land contract as fully as the same appears of record in my office.

Witness my hand and the seal of the board of supervisors this 3*t*d day of January, A. D. 1872.

[SEAL.]

J. P. CUMMINS,
County Auditor Adams County, Iowa.

292 (Endorsed:) F. Adams County vs. American Emigrant Company. Package No. 6. Plaintiff's record evidence. A. Resolution demanding performance, Hunter's report on; Ankeny, Niell, Thompson; demand & report. B. Resolution rescinding contract and ordering suit thereon. United States circuit court. Equity. No. 168. Fees, $2.25. Filed Mar. 22nd, 1872. George B. Corkhill, clerk.

293 7.

A.

September session. Second day, Sept. 5th, 1865.

Now comes Frank M. Davis, asking the issuance of a certificate certifying the indebtedness of the swamp-land fund to him for services rendered by him under a contract with W. A. Shields as county judge of Adams County, a copy of which contract was filed with said application.

On motion, the following preamble and resolution was adopted by the board.

Whereas, by the terms of a contract entered into Sept. 10th, 1860, between W'm A. Shields, as county judge of Adams County, and F. M. Davis, there is due to the said F. M. Davis 40 per cent. of the swamp land indemnity money and scrip refunded by the United States Government for swamp lands located prior to the selection of the swamp lands by Adams County, on proofs furnished by said Davis.

And whereas, by contract entered into on the third (3*d*) day
294 of September, 1862, between the board of supervisors of Adams County and the American Emigrant Company, said company became responsible for all claims against Adams County on account of said swamp lands, proofs, &c.:

Therefore, resolved by the board of supervisors of Adams County, Iowa, That there is justly due the said F. M. Davis, from the American Emigrant Company, by virtue of the said contracts above named, the said 40 per cent. on all funds or scrip obtained by the said company by virtue of proofs furnished by the said Davis.

B.

Special session, March 13th, 1866.

Now, on this 13th day of March, A. D. 1866, in accordance with the foregoing petition and notice, comes the board of supervisors of Adams County, Iowa, as follows: B. O. Stephenson, chairman, O. B. Case, Westley Homan, J. W. Morris, H. L. Harlow, R. H. Schooling, Alfred White, and Samuel Hardesty; Jas. M. Russell, absent.

295 Now comes Frank M. Davis, presenting a petition and account with a copy of a power executed by W. A. Shields as county judge of said county, claiming of the said county the sum of twenty-two hundred and two (2,202) dollars as compensation for services rendered in obtaining proofs under the powers above named.

J. W. Morris moved the prayer of the petition be granted. The motion was discussed at length, an' on the question being called the motion was lost.

296 C.

QUINCY, IOWA, *Jan. 6th*, 1869.

Adams County to Frank M. Davis, Dr.

To amount of judgment of district court of Page County, Iowa, as per execution and transcript hereto attached	$2,200 00
Interest from March 23*d*, 1867	$236 50
To judgment supreme court, Dec. 15th, 1868	15 25

Cost of transcript hereto attached	1 00
To ballance in my favor on witness fees, filing fees, &c., I paying my witnesses at both terms, the county theirs at both terms	3 85
Total	$2,456 60

(S'g'd) FRANK M. DAVIS.

Subscribed and sworn to by Frank M. Davis before me Jan. 6th, 1869.

[L. S.] (S'g'd) S. H. BUGBEE,
County Auditor.

Fees, $4.40.

297 D.

FRANK M. DAVIS *against* ADAMS COUNTY. } No. 80.

Date of judgment, March 23, 1867.
Amount of judgment, $2,200.00.

STATE OF IOWA,
Adams County:

I, John Bixby, clerk of the district court of Adams, Iowa, hereby certify the above to be a correct abstract of the judgment docket in my office as entered on page No. 19 of said docket in the matter of the judgment obtained by F. M. Davis, and against Adams County.

Witness my hand and the seal of the district court of Adams County, Iowa, this 8th day of September, A. D. 1868.

{ ADAMS COUNTY DIST. COURT SEAL. } (S'g'd) JOHN BIXBY,
Clerk.

298 At a supreme court for the State of Iowa, begun and held at the capitol in the city of Des Moines on Monday, Dec 7, 1868.

Present the Hon. John F. Dillon, *C. J.;*
" Chester C. Cole,
" George G. Wright,
" Joseph M. Beck,
Judges.

When the following, among other proceedings, were had and done, to wit:

TUESDAY, *Dec.* 15, 1868.

FRANK M. DAVIS *vs.* ADAMS COUNTY, APPE'T. } No. 3134.

Appeal from Page County.

Now, at this time, it being the 15th day of December, A. D. 1868, and the 2d day of the term allotted to the 3*t*d judicial district, the above cause coming up on the motion of defendant to reinstate upon the docket for trial, and the court being fully advised in the premises overrule said motion, and further order that the order made at the
299 June term of this court allowing defendant to show cause for reinstatement be, and it is hereby, discharged, and the appeal herein is dismissed as by the June order of this court. It is further ordered

293 7.

A.

September session. Second day, Sept. 5th, 1865.

Now comes Frank M. Davis, asking the issuance of a certificate certifying the indebtedness of the swamp-land fund to him for services rendered by him under a contract with W. A. Shields as county judge of Adams County, a copy of which contract was filed with said application.

On motion, the following preamble and resolution was adopted by the board.

Whereas, by the terms of a contract entered into Sept. 10th, 1860, between W'm A. Shields, as county judge of Adams County, and F. M. Davis, there is due to the said F. M. Davis 40 per cent. of the swamp land indemnity money and scrip refunded by the United States Government for swamp lands located prior to the selection of the swamp lands by Adams County, on proofs furnished by said Davis.

And whereas, by contract entered into on the third (3*d*) day
294 of September, 1862, between the board of supervisors of Adams County and the American Emigrant Company, said company became responsible for all claims against Adams County on account of said swamp lands, proofs, &c.:

Therefore, resolved by the board of supervisors of Adams County, Iowa, That there is justly due the said F. M. Davis, from the American Emigrant Company, by virtue of the said contracts above named, the said 40 per cent. on all funds or scrip obtained by the said company by virtue of proofs furnished by the said Davis.

B.

Special session, March 13th, 1866.

Now, on this 13th day of March, A. D. 1866, in accordance with the foregoing petition and notice, comes the board of supervisors of Adams County, Iowa, as follows: B. O. Stephenson, chairman, O. B. Case, Westley Homan, J. W. Morris, H. L. Harlow, R. H. Schooling, Alfred White, and Samuel Hardesty; Jas. M. Russell, absent.

295 Now comes Frank M. Davis, presenting a petition and account with a copy of a power executed by W. A. Shields as county judge of said county, claiming of the said county the sum of twenty-two hundred and two (2,202) dollars as compensation for services rendered in obtaining proofs under the powers above named.

J. W. Morris moved the prayer of the petition be granted. The motion was discussed at length, an' on the question being called the motion was lost.

296 C.

QUINCY, IOWA, *Jan. 6th*, 1869.

Adams County to Frank M. Davis, Dr.

To amount of judgment of district court of Page County, Iowa, as per execution and transcript hereto attached	$2,200 00
Interest from March 23*d*, 1867	$236 50
To judgment supreme court, Dec. 15th, 1868	15 25

Cost of transcript hereto attached	1 00
To balance in my favor on witness fees, filing fees, &c., I paying my witnesses at both terms, the county theirs at both terms	3 85
Total	$2,456 60

(S'g'd) FRANK M. DAVIS.

Subscribed and sworn to by Frank M. Davis before me Jan. 6th, 1869.

[L. S.] (S'g'd) S. H. BUGBEE,
County Auditor.

Fees, $4.40.

297 D.

FRANK M. DAVIS *against* ADAMS COUNTY. } No. 80.

Date of judgment, March 23, 1867.
Amount of judgment, $2,200.00.

STATE OF IOWA,
Adams County:

I, John Bixby, clerk of the district court of Adams, Iowa, hereby certify the above to be a correct abstract of the judgment docket in my office as entered on page No. 19 of said docket in the matter of the judgment obtained by F. M. Davis, and against Adams County.

Witness my hand and the seal of the district court of Adams County, Iowa, this 8th day of September, A. D. 1868.

{ ADAMS COUNTY DIST. COURT SEAL. } (S'g'd) JOHN BIXBY,
Clerk.

298 At a supreme court for the State of Iowa, begun and held at the capitol in the city of Des Moines on Monday, Dec 7, 1868.

Present the Hon. John F. Dillon, *C. J.;*
" Chester C. Cole,
" George G. Wright,
" Joseph M. Beck,
Judges.

When the following, among other proceedings, were had and done, to wit:

TUESDAY, *Dec.* 15, 1868.

FRANK M. DAVIS *vs.* ADAMS COUNTY, APPE'T. } No. 3134.

Appeal from Page County.

Now, at this time, it being the 15th day of December, A. D. 1868, and the 2d day of the term allotted to the 3*t*d judicial district, the above cause coming up on the motion of defendant to reinstate upon the docket for trial, and the court being fully advised in the premises overrule said motion, and further order that the order made at the
299 June term of this court allowing defendant to show cause for reinstatement be, and it is hereby, discharged, and the appeal herein is dismissed as by the June order of this court. It is further ordered

by the court that the plaintiff have and recover off and from the defendant the costs of this appeal, taxed at $15\frac{25}{100}$, and that he have therefor execution.

I, C. Linderman, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a full, true, and complete copy of the final order of said court in the case of Frank M. Davis vs. Adams County, as full, true, and complete as the same appears on the records of said court in my office.

In testimony whereof I have hercunto subscribed my name and affixed the seal of said court this 24th day of December, A. D. 1868.

(S'g'd) C. LINDERMAN, *Clerk.*

[SEAL OF THE SUPREME COURT OF IOWA.]

300 E.

General execution.

STATE OF IOWA,
Page County, ss:

FRANK M. DAVIS
vs.
ADAMS COUNTY, IOWA.

The State of Iowa to the sheriff of Adams County, greeting:

Whereas at the March term, 1867, of the district court of said county, on the 23d day of March, 1867, at the town of Clarinda therein, in a certain cause, wherein Frank M. Davis was plaintiff and Adams County was defendant, judgment for the sum of twenty-two hundred (2,200) dollars, costs of suit, was rendered against Adams County, Iowa, and in favor of said plaintiff, and it appearing from the records of said court that there is still due on said judgment the sum of twenty-two hundred (2,200.00) dollars and interest at the rate of 6 per cent. from date of judgment:

Now, therefore, you are hereby commanded that of the property,
301 goods, and chattles, and for want thereof, the lands and tenements of said Adams County, Iowa, subject to execution, you cause to be made the sum of twenty-two hundred (2,200.00) dollars, together with interest thereon at the rate of 6 per cent. per annum from the 23d day of March, 1867, until paid; also, one hundred and four & $\frac{10}{100}$ dollars, costs of suit, and all cost accruing thereon, and make due return thereof to our said district court within seventy days from the date of this writ.

Witness Jacob Butler, clerk of said court, of said county, with the seal hereto affixed, at Clarinda, this 28th day of December, A. D. 1868.

[DIST. COURT SEAL, PAGE COUNTY.] J. BUTLER,
Clerk of said Court,
By T. J. HENDERSON.

302 F.

January session, 1869. First day, January 6th, A. D. 1869.

Now, at this time, this being the day fixed by law for regular meetings of the board of supervisors, comes the board of supervisors of Adams County, as follows, to wit, O. B. Case, Robert Hunter, Samuel

Larimer, Charles Hays, William R. Evans, W. D. Thompson, Jesse Orm, and John Niell; H. G. Ankeny, member-elect from Quincy Township, absent; when it appearing to the board that the members present had all been duly and legally qualified by taking the oath of office prescribed by law, Samuel Larimer was appointed temporary chairman.

Second day, January 7th, 1869.

On motion, the following claims were allowed, and warrants ordered in payment of the same:

A. R. Anderson, for transcribing evidence by appointment of the court in case F. M. Davis vs. Adams County, $40.00; C. E. Millard, att'y fee in case F. M. Davis against Adams County, $100.00;
303 F. M. Davis, judgment in 100$ warrant. $2,456.60.

Approved and signed this 22d Jan., 1869.

H. G. ANKENY, *C. B. S.*

STATE OF IOWA,
Adams County:

I, J. P. Cummins, county auditor of Adams County, Iowa, hereby certify that the above and foregoing are true & perfect copies of the records of the board of supervisors as they now appear on file in my office, to wit:

Exhibit marked "A" is a true copy of the resolutions of the board of supervisors, as therein set forth.

Exhibit marked "B" is a true copy of the record rejecting the claim of F. M. Davis as a claim against Adams County.

Exhibit marked "C" is a true copy of the account of F. M. Davis, as therein set forth, settled Jan. 9th, 1869.

Exhibit marked "D" is a true copy of the judgment docket entry, certified in case of Frank M. Davis vs. Adams; also, copy of the
304 judgment-entry in the supreme court in the same case as therein set forth.

Exhibit marked "E" is a true copy of the execution issued upon the said judgment from district court of Page County, as therein set forth.

Exhibit marked "F" is a true copy of the records showing amounts allowed against county on settlement of judgment Jan. 9th, 1869, all as fully and completely as they now appear of record in my office.

Witness my hand & the seal of the board of supervisors of Adams County this 3*t*d of January, A. D. 1872.

[SEAL.] (S'g'd) J. P. CUMMINS,
County Auditor, Adams Co., Iowa.

305 United States circuit court. Equity 168.

(Endorsed:) Adams County vs. American Emigrant Company. Package No. 7.

Plaintiffs record evidence:
A. Copy of allowance of claim of Davis.
B. Rejecting claim against county.
C. Acc't settled.
D. Copy of judgment-docket in supreme & district court.
E. Copy of execution from Page County.
F. Copy of record allowing judgment & att'y fees.
Fees, $2.30.

Filed Mar. 22d, 1872.

GEORGE B. CORKHILL, *Clerk.*

306 TREASURY DEPARTMENT, REGISTER'S OFFICE,
November 22d, 1871.

Pursuant to the act of March 3, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys," I, John Allison, Register of the Treasury Department, do hereby certify that the annexed copies of the reports of the Commissioner of the General Land Office, numbered 15727, 16600, & 16891, on account of swamp lands in Adams County, Iowa, and of Interior warrants Nos. 3091, 6023 & 406, with the draft issued upon the same, are true copies of the originals on file in this office.

(Signed) JOHN ALLISON, *Register.*

Be it remembered, that John Allison, esq., who certified the annexed transcript, is now, and was at the time of doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

307 In testimony whereof, I, George S. Boutwell, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this department, at the city of Washington, this twenty-second day of November, in the year of our Lord 1871.

[SEAL.] (Signed) GEORGE S. BOUTWELL,
Secretary of the Treasury.

No. 1527. Adams County.

GENERAL LAND OFFICE,
February 9th, 1865.

SIR: I have stated an account between the United States and the State of Iowa, under the provisions of the act of Congress, approved March 2d, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," as follows, viz:

COUNCIL BLUFFS DISTRICT.

Certificates.	Purchaser's name.	Date of purchase.	Part of section.	S.	T.	R.	Acres.	Price.	Amount.
					N.	W.			
2670	Jesse Williams }	19 June, 1854	N. ½ of N. W. ¼	2	71	34	75 15	1 25	93 93¾
2676	Same. }								
3884	Elijah Hayden	11 Oct., "	S. W. ¼ " S. W. ¼	4	"	"	40	"	50
3884	" "	" " "	S. E. ¼ " S. E. ¼	"	"	"	40	"	50
2967	W'm A. Shields	10 July, "	S. ½ " S. E. ¼	7	"	"	80	"	100
3886	Elijah Hayden	11 Oct., "	N. W. ¼ " S. E. ¼	8	"	"	40	"	50
1239	W'm R. Evans	30 Dec., 1853	N. E. ¼ " N. E. ¼	8	"	"	40	"	50
3496	John Barnett	2 Oct., 1854	S. E. ¼ " N. E. ¼	"	"	"	40	"	50
3885	Elijah Hayden	11 & 12 " " }	N. ½ " N. E. ¼	9	"	"	80	"	100
3935	" "								
3885	" "	12 " "	N. E. ¼ " N. W. ¼	9	"	"	40	"	50
309 2472	W'm H. Harriman	7 June, 1854	S. E. ¼ of N. E. ¼	6	72	34	40	1 25	50
2298	Tho's C. Kennedy	27 May, "	N. W. ¼ " N. W. ¼	7	"	"	49 26	"	61 57½
1227	Samuel Larime	28 Dec., 1853	S. E. ¼ " S. E. ¼	25	"	"	40	"	50
2069	Calvin Day	11 May, 1854	S. W. ¼ " S. W. ¼	31	"	"	44 34	"	55 42
"	Same.	" " "	N. E. ¼ " S. W. ¼	"	"	"	40	"	50
2590	Jesse Williams }	13 June, "	{ S. W. ¼ " S. E. ¼ & { N. E. ¼ " S. E. ¼ }	35	"	"	80	"	100 00
"	" " }								
2323	W'm A. Howard	27 May, "	N. W. ¼ " S. E. ¼	12	73	34	40	"	50
2331	Same.	29 May, "	S. E. ¼ " S. W. ¼	"	"	"	40	"	50
2323	W'm O. Howard	27 " "	S. W. ¼ " S. E. ¼	"	"	"	40	"	50
2331	Same.	29 " "	S. W. ¼ " S. W. ¼	"	"	"	40	"	50
2175	Jacob Harader	19 " "	S. W. ¼ " S. W. ¼	14	"	"	40	"	50
1340	Simeon Fees	16 Jun., "	S. E. " N. E. ¼	"	"	"	40	"	50
2202	Simeon Fees	22 May, "	S. W. ¼ " S. E. ¼	22	"	"	40	"	50
1157	Same.	13 Dec., 1853	N. W. ¼ " N. W. ¼	23	"	"	40	"	50
279	Tho's H. Davis	4 July, "	N. E. ¼ " N. E. ¼	31	"	"	40	"	50
1160	Harrison H. Powell	13 Dec., "	S. E. ¼ " N. E. ¼	31	"	"	40	"	50
3138	A. S. Grosvenor	22 July, 1854	S. E. ¼ " N. W. ¼	1	71	35	40	"	50
4035	Solomon Odell	17 Oct., "	S. E. ¼ " S. E. ¼	2	"	"	40	"	50 0
	Carried forward						A. 1,248 75		$1,560 93¾

Certificate.	Purchaser's name.	Date of purchase.	Part of section.	S.	T.	R.	Acres.	Price.	Amount.
	Amount brought forward						A. 1,248 75		$1,560 93½
1408	Daniel D. Hart	2 Feb'y, 1854	S. E. ¼ of S. W. ¼	10	71	35	40	1 25	50
2802	Henry Oyler	27 June, "	S. W. ¼ of S. E. ¼	11	"	"	40	"	50
4036	Sarah McCaskey	17 Oct., "	N. E. ¼ " N. E. ¼	"	"	"	40	"	50
3316	Jonas D. Hart	27 May, "	S. E. ¼ " N. W. ¼	11	"	"	40	"	50
2802	Henry Oyler	" June, "	S. E. ¼ " S. W. ¼	11	"	"	40	"	50
2316	Jonas D. Hart	" May, "	S. W. ¼ " S. W. ¼	"	"	"	40	"	50
"	" " "	" " "	N. E. ¼ " S. W. ¼	"	"	"	40	"	50
"	" " "	" " "	N. W. ¼ " S. W. ¼	"	"	"	40	"	50
3982	Horace Everett	16 Oct., "	N. ½ " N. W. ¼	12	"	"	80	"	100
3331	Perry Mack	3 " "	S. ½ " N. E. ¼	"	"	"	80	"	100
"	" "	" " "	S. E. ¼ " N. W. ¼	12	"	"	40	"	50
1928	Tho's Lougstreth	28 April, "	S. E. ¼ " S. E. ¼	12	"	"	40	"	50
1407	Dan'l D. Hart	2 Feb'y, "	N. E. ¼ " N. W. ¼	15	"	"	40	"	50
2842	B. W. Harlow	29 June, "	S. W. ¼ " S. W. ¼	17	"	"	40	"	50
3673	Jno. H. Mayarhoff	6 Oct., "	S. W. ¼ " S. W. ¼	20	"	"	40	"	50
311 3671	John H. Mayarhoof	6 Oct., 1854	N. E. ¼ " N. W. ¼	29	71	35	40	1 25	50
"	" "	" " "	S. W. ¼ of N. W. ¼	29	71	35	40	"	50
3879	Abel Harper	11 " "	S. W. ¼ " S. E. ¼	30	"	"	40	"	50
"	" "	" " "	W. ½ " S. W. ¼	"	"	"	63 99	"	79 98
3672	John H. Mayarhoff	6 " "	E. ½ " N. E. ¼	"	"	"	80	"	100
3037	Abel Harper	13 July, 1854	W. ½ " N. W. ¼	31	"	"	65 13	"	81 41½
1452	Geo. P. West	11 Feb'y, "	N. E. ¼ " S. W. ¼	31	"	"	40	"	50
1067	John Houck	3 Dec., 1853	S. W. ¼ " N. E. ¼	12	72	35	40	"	50
3537	Sam'l Hardisty	3 Oct., 1854	E. ½ " N. W. ¼	14	"	"	80	"	100
"	" "	" " "	N. W. ¼ " N. E. ¼	14	"	"	40	"	50
3540	John Barnett	" " "	N. W. ¼ " N. W. ¼	"	"	"	40	"	50
3131	Enos Lowe	22 July, "	N. W. ¼ " S. W. ¼	"	"	"	40	"	50
4047	James S. Easley	18 Oct., "	N. E. ¼ " S. W. ¼	"	"	"	40	"	50
3539	John Barnett	3 " "	N. E. ¼ " N. E. ¼	15	"	"	40	"	50
2918	James H. Bell	5 July, "	S. W. ¼ " S. W. ¼	15	"	"	40	"	50
"	" " "	" " "	N. W. ¼ " S. W. ¼	15	"	"	40	"	50
"	" " "	" " "	N. E. ¼ " S. W. ¼	"	"	"	40	"	50
"	" " "	" " "	S. E. ¼ " S. W. ¼	"	"	"	40	"	50
3132	Enos Lowe	22 " "	N. E. ¼ " S. E. ¼	"	"	"	40	"	50
2920	W'm D. Bell	5 " "	S. W. ¼ " N. E. ¼	21	"	"	40	"	50
312 2917	Enos Lowe	4 July, 1854	N. W. ¼ of N. E. ¼	21	72	35	40	1 25	50
2920	W'm D. Bell	4 July, "	N. E. ¼ of N. W. ¼	21	72	35	40	1 25	50
2917	Enos Lowe	5 " "	S. E. ¼ " S. W. ¼	21	"	"	40	"	50
"	" "	4 " "	N. E. ¼ " S. W. ¼	"	"	"	40	"	50
		" " "	S. E. ¼ " N. W. ¼	"	"	"	40	"	50

COUNCIL BLUFFS DISTRICT—Continue.

Certificates	Purchaser's name.	Date of purchase.	Part of section.	S.	T.	R.	Acres.	Price.	Amount.
2920	W'm D. Bell	5 " "	N. E. ¼ " N. E. ¼	21	"	"	40	"	50
"	" " "	" " "	S. W. ¼ " S. W. ¼	"	"	"	40	"	50
"	" " "	" " "	S. E. ¼ " N. E. ¼	"	"	"	40	"	50
2919	Henry Frey	" " "	S. E. ¼ " N. W. ¼	22	"	"	40	"	50
"	" "	" " "	N. E. ¼ " N. W. ¼	22	"	"	40	"	50
"	" "	" " "	N. W. ¼ " N. W. ¼	22	"	"	40	"	50
3675	G. H. Brockhoff	6 Oct., "	W. ½ " S. W. ¼	30	"	"	52 20	"	65 25
3676	" " "	" "	W. ½ " N. W. ¼	31	"	"	52 70	"	65 87½
4069	Moses Smith	19 "	S. E. ¼ " S. E. ¼	36	"	"	40	"	50
							A. 3,442 77		$4,303 45

313 GENERAL LAND OFFICE.
February 9th, 1865.

I hereby certify that I have carefully compared the foregoing list with the original certificates o' purchase designated therein, and find the description of the several tracts, the dates of purchase, the area, price, and amount correctly stated.

W'M F. WALLACE,
Ex. Clerk.

NOTE.—The official examination, as certified by the head of the swamp division, in regard to the swampy character of the land and the right to indemnity, is on file in this office, bearing date January 16th, 1865.

C. CLARK,
Refunding Clerk.

And I do hereby certify that the above-described tracts, situated in the State of Iowa, were duly selected and claimed by the State as swamp, and have been disposed of by the United States, and that due proof has been filed in my office, showing that said tracts were
314 swamp lands within the intent and meaning of the act of Congress approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp land within their limits." Therefore the said State of Iowa is entitled to receive the said sum of four thousand three hundred and three dollars and forty-five cents ($4,303.45), as indemnity, according to the provisions of an act of Congress approved March 2nd, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands."

Very respectfully, your ob't servant,

J. M. EDMUNDS,
Commissioner.

Hon. J. P. USHER,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
March 8th, 1865.

The foregoing decision of the Commissioner of the General Land Office is hereby approved.

J. P. USHER,
Secretary.

315 GENERAL LAND OFFICE,
March 9th, 1865.

SIR: I hereby certify that I have examined and adjusted an account between the United States and the State of Iowa, and find the sum of $4,303.45 is due from the United States to the said State, on ⅔ of lands selected as swamp or overflowed, under the act of Congress approved Sept. 28th, 1850, and erroneously sold by the United States, payment for which is now demanded, under the provisions of the act of Congress approved M'ch 2nd, 1855, and which said sum is so due said State for the lands described in the foregoing list, as appears from said list

and the vouchers herewith presented for the decision of the First Comptroller of the Treasury thereon.

Very respectfully, your ob't servant,

J. M. EDMUNDS,
Commissioner.

Hon. R. W. TAYLER,
First Comptroller of the Treasury.

316 TREASURY DEPARTMENT,
Comptroller's Office.

Admitted and certified this 14th day of March, 1865. Payable to the governor of Iowa (for Adams County).

R. W. TAYLER,
Comptroller.

To the REGISTER.

GENERAL LAND OFFICE,
August 21, 1866.

SIR: I have stated an account between the United States and the State of Iowa, under the provisions of the act of Congress, approved March 2nd, 1855, entitled, "An act for the relief of purchasers and locators of s'amp and overflowed lands," as follows, viz:

COUNCIL BLUFFS DISTRICT.

Certificate.	Purchaser's name.	Date of purchase.	Part of section.	S.	T.	R.	Acres.	Price.	Amount.
1664	Richard Edwards	18 Mar., 1854	S.W. ¼ of N.W. ¼	18	72	32	35.67	$1.25	44 58¾
2065	John Query	11 May, "	S.W. ¼ " N.E. ¼	18	"	"	40	" "	50
2325	W'm Engle	27 " "	N.E. ¼ " S.W. ¼	33	73	"	40	" "	50
1660	L. V. Reckley	18 Mar., "	S.E. ¼ " S.E. ¼	23	72	"	40	" "	50
2040	S. F. Gose	10 May, "	W. ½ " N.W. ¼	24	"	"	80	" "	100
3160	Tho's C. Kennedy	24 July, "	N.W. ¼ " N.E. ¼	26	"	"	40	" "	50
2066	F. A. Nolan	11 May, "	N.E. ¼ " N.W. ¼	26	"	"	40	" "	50
3146	W'm Robinson	22 July, "	N.E. ¼ " N.E. ¼	28	"	"	40	" "	50
3147	George Robinson	" " "	N.W. ¼ " N.E. ¼	28	"	"	40	" "	50
318 2286	W'm O. Howard	26 May, 1854	S.E. ¼ of N.E. ¼						
2286	" " "	" " "	N.E. ¼ " S.E. ¼						
2286	" " "	" " "	S.E. ¼ " S.E. ¼	6	73	33	120	1.25	150
2317	Daniel D. Hart	27 " "	N.E. ¼ " S.W. ¼	10	71	35	40	" "	50
183	Thomas Thompson	31 " 1853	W. ½ " S.E. ¼	17	71	35	80	" "	100
	Amounting						.... A.	635 67	$794 58¾

319 GENERAL LAND OFFICE,
August 21st, 1866.

I hereby certify I have carefully compared the foregoing list with the original certificates of purchase designated therein, and find the discription of the several tracts, the date of purchase, the area, price, and amount correctly stated. Also the official examination as certified by the head of the swamp division in regard to the swampy character of the land and the right to indemnity is on file in this office bearing date August, 1866.

W'M F. WALLACE,
Ex. Clerk.

And I do hereby certify that the above described tracts, situated in the State of Iowa, were duly selected and claimed by the State as swamp land, and have been disposed of by the United States; and that due proof has been filed in my office, showing that said tracts were swamp lands within the intent and meaning of the act of Congress ap-
320 proved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp land within their limits." Therefore said State of Iowa is entitled to reclaim the said sum of seven hundred and ninety-four dollars and fifty-eight cents ($794.58) as indemnity according to the provisions of an act of Congress approved March 2nd, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands."

Very respectfully, your ob't servant,

JOS. S. WILSON,
Acting Commissioner.

This is to certify that the foregoing list of lands has been carefully compared with the list of swamp selections on file in this office, and that the tracts therein contained were duly selected as swamp lands. I have also caused to be made critical examination of the evidence on file respecting the character of each tract, and find the swampy character thereof thereby established.

J. E. PARKER,
of Swamp Division.

321 Hon. JAMES HARLAN,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
August 31st, 1866.

The foregoing decision of the Commissioner of the General Land Office is hereby approved.

JAMES HARLAN,
Secretary.

GENERAL LAND OFFICE,
October 2nd, 1866.

SIR: I hereby certify that I have examined and adjusted an account between the United States and the State of Iowa, and find that the sum of seven hundred and ninety-four dollars and fifty-eight cents ($794.58) is due from the United States to the State of Iowa on account of lands selected by said State as swamp or overflowed under the provisions of the act of Congress approved September 28th, 1850, and erroneously sold by the United States, payment for which is de-
322 manded under the provisions of the act of Congress of March

2nd, 1855, and which sum is so due for the lands described in the foregoing list, as appears from said list, and the vouchers herewith transmitted for the decision of the First Comptroller of the Treasury.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

Hon. R. W. TAYLER,
First Comptroller of the Treasury.

TREASURY DEPARTMENT,
Comptroller's Office.

Admitted and certified this 10th day of October, 1866, payable to the governor of Iowa (for Adams County).

W'M HEMPHILL JONES,
Acting Comptroller.

To the REGISTER.

GENERAL LAND OFFICE,
September 17, 1866.

SIR: I have stated an account between the United States and the State of Iowa, under the provisions of the act of Congress approved March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," as follows, viz:

CHARITON DISTRICT.

	Certificate.	Purchaser's name.	Date of purchase.	Part of section.	S.	T.	R.	Acres.	Price.	Amount.
	2302	Henry Engle	May 27, 1851	E. ½ of S. W. ¼, & S. E. N. W. ¼.	4	N. 72	W. 32	120.00	$1 25	150 00
	"	" "	" " "							
	2303	" "	" " "	S. E. ¼ of N. E. ¼	8	"	"	40 "	" "	50 "
	2327	William Engle	" " "	S. W. ¼ " N. W. ¼						
	"	" "	" " "	N. E. ¼ " N. W. ¼	9	"	"	80 "	" "	100 "
	2300	John Crarey	" " "	S. E. ¼ " N. E. ¼	18	"	"	40 "	" "	50 "
	2296	Thomas C. Kennedy	" " "	N. W. ¼ " S. W. ¼	13	"	"	40 "	" "	50 00
	2557	Amos Crater	June 10, 1854	N. E. ¼ " S. E. ¼	13	"	"	40 "	" "	50 "
	3148	William Browne	July 22, "	N. W. ¼ " N. W. ¼, & S. E. ¼ " N. W. ¼.	27	"	"	80 "	" "	100 "
	"	" "								
324	1435	E. Cavert	Feb'y 9, 1854	S. W. ¼ of N. W. ¼	28	72	33	40 "	1 25	50
	1436	" "	" " "	N. W. ¼ of N. W. ¼	29	"	"	40 "	" "	50
	1437	" "	" " "	N. E. ¼ of S. W. ¼	30	"	"			
	"	" "	" " "	S. ½ of N. E. ¼	30	"	"	120	" "	150
	1228	Samuel Larimer	Dec. 29, 1853	W. ½ of S. W. ¼	30	"	"	102.11	" "	127 63
	3473	Charles N. Marshal	Oct. 2, 1854	S. E. ¼ " N. W. ¼	30	"	"	40	" "	50
		Amounting						782 11		$977 63

GENERAL LAND OFFICE,
September 17, 1866.

I hereby certify that I have carefully compared the foregoing list with the original certificates of purchase designated therein, and find the description of the several tracts, the date of purchase, the area, price, and amount correctly stated.

D. H. McCOMAS,
Ex. Clerk.

325 The official examination as certified by the head of the Swamp Division, in regard to the swampy character of the land and the right to indemnity is on file in this office bearing date Sept. 13th, 1866.

C. CLARK,
Refunding clerk.

And I do hereby certify that the above described tracts situated in the State of Iowa, were duly selected and claimed by the State as swamp-land, and have been disposed of by the United States, and that due proof has been filed in my office, showing that said tracts were swamp-lands within the intent and meaning of the act of Congress approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp-land within their limits"; therefore the said State of Iowa is entitled to receive the said sum of nine hundred and seventy-seven dollars and sixty-three cents ($977.63¾) as indemnity according to the provisions of an act of Congress
326 approved March 2nd, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands."

Very respectfully your ob't servant,

JOS. S. WILSON,
Commissioner.

Hon. O. H. BROWNING,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
February 14th, 1867.

The decision of the Commissioner of the General Land Office in the foregoing case is hereby approved.

O. H. BROWNING,
Secretary.

This is to certify that the foregoing list of lands has been carefully compared with the lists of swamp selections on file in this office, and the tracts therein contained have been duly selected and reported as swamp-lands. I further certify that the State has filed proof in accordance with the rulings of the department establishing the swampy character of each tract embraced in said list, and the said proof is satisfactory.

327

W. W. CURTIS,
Head Swamp-Land Division.

GENERAL LAND OFFICE,
February 15th, 1867.

SIR: I hereby certify that I have adjusted an account between the United States and the State of Iowa and find there is due from the United States to the said State of Iowa the sum of nine hundred seventy-seven dollars and sixty-three cents, on account of lands selected by said State under the provisions of the act of Congress approved Sept. 28th, 1850, as swamp or overflowed and which have been erroneously sold by the United States; and now the said State demands payment & indemnity therefor under the provisions of an act of Congress approved March 2nd, 1855. This said sum is so due for the lands described in the foregoing list, as appears from said list and the vouchers herewith submitted for the consideration and decision of the First Comptroller of the Treasury thereon.

328 Very respectfully your ob't servant,

JOS. S. WILSON,
Commissioner.

Hon. R. W. TAYLER,
First Comptroller of the Treasury.

TREASURY DEPARTMENT,
Comptroller's Office.

Admitted and certified this 25th day of February, 1867, payable to the Governor of Iowa (for Adams County).

R. W. TAYLER,
Comptroller.

To the REGISTER.

329 SWAMP-LAND DIVISION,
GENERAL LAND OFFICE,
February 9th, 1867.

Hon. JOS. S. WILSON,
Commissioner:

SIR: The accompanying case, Adams Co., Iowa, falls under the old rulings of the office.

It will be remembered that in 1862 the Secretary decided tha' a new form of proof should be required in indemnity cases. This decision at first applied to all proof at that time on file in the office and not acted upon. It was afterward modified so as to admit cases for adjustment on the old proof where the same had been filed prior to the decision. The proof in this case is of that class. It was inadvertently omitted from a former adjustment for that county for reason of an error in the list of selections reported by the surveyor-general, he having included these lands in a Council Bluffs list instead of Chariton, where it properly belonged.

Very respectfully, &c.,

W. W. CURTIS.

330 Draft No. 249, on Treasury warrant No. 3091.

$4,303\frac{45}{100}$.] TREASURY OF THE UNITED STATES,
Washington, March 21st, 1865.

At sight pay to the Governor of Iowa or order, four thousand three hundred three $\frac{45}{100}$ dollars.

No. 249. Interior.

Registered March 21st, 1865.

J. A. GRAHAM,
Act'g Register of the Treasury.

Issued on requisition No. —.
$4,303.45.

F. E. SPINNER,
Treasurer of the United States.

To the First National Bank of Des Moines, Iowa.
(Across the face:) Paid. Paid. Adams Co.

Pay to the order of J. C. Savery, agent for Adams County.
June 9th, 1865.

W. M. STONE,
Gov. Iowa.

J. C. SAVERY,
Agent for Adams County.
CHA'S. MOSHER.

331 Treasury Interior.] TREASURY DEPARTMENT.

To the Treasurer of the United States, greeting:

Pay to the governor of Iowa (for Adams County) or order, out of the

appropriation named in the margin, four thousand three hundred & three dollars & forty-five cents, on account of land selected by the State of Iowa, as swamp or overflowed, & erroneously sold by the U. S., agreeably to a certificate of the Comptroller of the Treasury, No. 15727, dated 14 March, 1865, recorded by the register. For so doing, this shall be your warrant.

Given under my hand and the seal of the Treasury, this 20th day of March, in the year one thousand eight hundred and sixty-five and of Independence the 89.

[SEAL.]

H. McCULLOCH,
Secretary of the Treasury.

332 Warrant No. 3091.

Appropriation. Indemnity for swamp-lands purchased by individuals, &c.

W. H. W. R. & E. 21. $4,303.45. Countersigned, R. T. Recorded 21.

R. W. TAYLER,
Comptroller.

J. A. GRAHAM,
Acting Register.

Received for the above warrant, draft No. 249, on First N. B., Des Moines, Iowa.

H. L. SKINNER.

333 Draft No. 1250. On Treasury warrant No. 6023.

$794.58.] TREASURY OF THE UNITED STATES,
Washington, Oct. 15, 1866.

At sight pay to the governor of Iowa, for Adams County, or order, seven hundred ninety-four $\frac{58}{100}$ dollars.

No. 1250. Interior.

Registered Oct. 15, 1866.

S. B. COLBY,
Register of the Treasury.
F. E. SPINNER,
Treasurer of the United States.

$974.58.

To the First National Bank of Des Moines, Iowa.

(Across the face:) First Nat'l Bank Des Moines, Iowa. Nov. 10, 1866. Paid.

Pay to James C. Savery, agent for Adams County.

W. M. STONE.
Governor of Iowa.

(For Adams County.)
JAMES C. SAVERY,
Agent for Adams County.

334 Treasury. Interior.] TREASURY DEPARTMENT.

To the Treasurer of the United States, greeting:

Pay to the governor of Iowa, or order, out of the appropriation

named in the margin, seven hundred & ninety-four dollars & fifty-eight cents, on account of lands selected by said State (for Adams Co.), as swamp or overflowed, & erroneously sold by the U. S., agreeably to a certificate of the Comptroller of the Treasury, No. 16600, dated 10th October, 1866, recorded by the Register. For so doing, this shall be your warrant.

Given under my hand and the seal of the Treasury, this 15 day of October, in the year one thousand eight hundred and sixty six, and of Independence the 91st.

[SEAL.] H. McCULLOCH,
Secretary of the Treasury.

335 Warrant No. 6023.

Appropriation. Indemnity for swamp lands purchased by individuals.

W. H. W. R. & E. 15. $794.58. Countersigned: R. T. F. Recorded 15.

W'M HEMPHILL JONES,
Acting Comptroller.

J. A. GRAHAM,
Ass't Register.

Received for the above warrant, draft No. 1250 on 1st Des Moines, Iowa.

H. L. SKINNER.

336 Draft No. 1721. On Treasury warrant No. 406.

$977.63.] TREASURY OF THE UNITED STATES,
Washington, March 5th, 1867.

At sight pay to the governor of Iowa, for Adams Co., or order, nine hundred seventy-seven $\frac{63}{100}$ dollars.

No. 1721.

Registered March 5, 1867.

S. B. COLBY,
Register of the Treasury.
F. E. SPINNER,
Treasurer of the United States.

$977.63.

To the First National Bank of Des Moines, Iowa.

(Across the face:) Paid. Paid.

Pay to James C. Savery, special agent of Adams Co.

W. M. STONE,
Governor of Iowa.

JAMES C. SAVERY,
Agent for Adams Co.

337 Treasury. Interior.] TREASURY DEPARTMENT.

To the Treasurer of the United States, greeting:

Pay to the governor of Iowa, or order, out of the appropriation named in the margin, nine hundred & seventy-seven dollars and sixty-three cents, on account of lands selected by said State, as swamp or overflowed (for Adams County), & erroneously sold by the U. S., agree

ably to a certificate of the Comptroller of the Treasury, No. 16891, dated 25 February, 1867, recorded by the Register. For so doing, this shall be your warrant.

Given under my hand and the seal of the Treasury this 2nd day of March, in the year one thousand eight hundred and sixty-seven, and of Independence the 91.

[SEAL.]

H. McCULLOCH,
Secretary of the Treasury.

338 Warrant No. 406.

Appropriation; indemnity for swamp lands purchased by individuals.

W. H. W. R. & E. 4. $977.63. Countersigned, R. T. F. Recorded 4.

R. W. TAYLER,
Comptroller.

J. A. GRAHAM,
Assist. Register.

Received for the above warrant draft No. 1721 on 1st Des Moines, Iowa. W. P.

H. L. SKINNER.

339 (Endorsed:) Package No. 8. H. Adams County vs. American Emigrant Company. Plaintiff's record evidence. Reports to Treasury No. 15727; No. 6600; No. 16891. Drafts 249, $4,303.43 1250, $794 $\frac{43}{100}$; 1721, $977 $\frac{63}{100}$; 3 receipts, 3 endorsements, 3 date of payments. Fees $300. Filed Mar. 22d, 1872. George B. Corkhill, clerk.

340 *Circular.*

OFFICE OF THE AMERICAN EMIGRANT COMPANY,
New York, July 24th, 1862.

For the purpose of answering the numerous inquiries addressed to this office from different sections of Iowa, in respect to the plans and operations of this company, and also in reply to the many propositions for the sale of lands, we have thought proper to publish this circular to all whom it may concern.

The company are not making investments in promiscuous tracts of land scattered over the State, but are contracting for lands claimed by certain counties under the grant of 1850. These lands being thus acquired by the company are devoted to a specific purpose, viz, reclamation and settlement, and unless they were obtained upon terms nearly a' liberal as those offered by the homestead bill, the object could not be accomplished.

In answer to many inquiries as to the precise time when the company propose to commence forwarding settlers to the locality where each writer resides, we will reply as follows: The company can make
341 no use whatever of the lands until the title to the same has been perfected in the county. Hence the importance of giving this branch of the matter their first and undivided attention. Those feeling an equal anxiety with them in procuring this settlement are no doubt fully aware of the following difficulties in the way of a final settlement with the government:

The grant under which the counties are to obtain these lands was made in the year 1850, and up to this time, as we are advised, not a single county has obtained a full settlement with the United States of their claim.

Some few have obtained a small portion of the vacant lands, but in no instance has the claim for money been paid, and in view of late decisions of the department, one refusing indemnity to counties which fail to make and report the selections prior to March 3d, 1857, and others rejecting proof already made and imposing new forms from time to time, after thousands of dollars had been expended by many of the counties,
342 it would seem that another twelve years would elapse before the claims would be settled up.

Again, whatever efforts have been made by the several counties during this time in numerous instances (such as making "selections," "proof," and the selling and incumbering the lands before title was obtained) has only seemed to add new complication to the difficulties already in the way of final adjustment. But the vigorous and systematic policy inaugurated by the American Emigrant Company in behalf of those counties which have availed themselves of the benefits of this organization, warrant the belief that such an arrangement can be made with the government in consideration of settling the lands as to enable the company to commence making settlements early next season.

A large number of applications are already registered of those who wish to make a home in Iowa, and the company are only waiting the opportunity to forward them immediately. Some anxiety is manifested on the part of many "old settlers," as to the character and ability
343 of the "emigrants" intended for Iowa. To such as well as all other proper inquiries we are ever pleased to respond to in the frankest manner, and we can conceive of no better way than to quote the following paragraph from one of our circulars intended for distribution among those seeking a home in the West:

"* * * * The conditions upon which these lands are sold at this low price and long time are as follows:

"Each purchaser shall contract to settle upon the tract purchased within one year from the date of such purchase. Shall cultivate yearly an amount proportioned to the number of acres purchased, to wit, for every 160 acres of prairie he shall cultivate the first year after occupation, five acres for crops, five acres for timber, and five acres for fruit; the company furnishing the necessary seed, an equal amount to be returned from the crop; also, timber seed gratis, and fruit settings at half the nursery prices.

"Whenever the settler shall provide the necessary means for the proper care and protection of sheep, the company propose to furnish each
344 with such a number as may be desired upon the most advantageous terms.

"The American Emigrant Company forward all settlers to their destination at such reduced rates of traveling fare as in many instances, particularly the European emigration, as to save the emigrant the government price of the land. Where colonies are organized, liberal donations are made toward erecting churches, school-houses, public buildings, &c. These are some of the great advantages afforded by the emigration plan of the American Emigrant Company. In no instance will contracts be made with settlers not having sufficient means, and in other respects being competent to perform their contract.

"All communications relating to the business of the company in the State of Iowa should be addressed to their general agent for that State,

F. C. D. McKay, Des Moines, who is fully authorized, under positive instructions, to negotiate and contract with certain counties for the transfer of their swamp-land claims to this company, to purchase
345 timber land in such counties, and establish local agencies for the transaction of the business, and do all other things necessary to be done in order to carry out the plans and legitimate purposes of the company.

"S. P. LYMAN,
"*Secretary and Ch'n Ex. Board of A. E. C.*"

346 *Instructions of the Commissioner of the General Land Office in regard to indemnity proof on swamp land.*

STATE LAND OFFICE,
Des Moines, June 20th, 1863.

The following communication was received by his excellency, Gov. Kirkwood, and filed in this office June 18th, 1862, requiring further proof to establish the claim of the State to indemnity for lands sold after the passage of the act of the 28th September, 1850, making the grant, but prior to selection.

A. B. MILLER,
Register.

GENERAL LAND OFFICE,
May 31st, 1862.

His excellency the governor of Iowa, Des Moines, Iowa:

SIR: Certain proof, sent by the authorities of Iowa, in the matter of a claim for swamp indemnity, under the act of Congress approved 2d March, 1855, volume 10, page 634, chapter 147, having recently undergone the revision of the Secretary of the Interior for his approval,
347 if satisfactory, of the Commissioner's opinion, as the law requires, the Secretary has rendered a decision in which, whilst it does not disturb any case in which proof has been heretofore filed in accordance with requirements, lays down, in respect to all testimony hereafter to be taken in support of such claims, the following principles:

"The second section of the act of March 2, 1855, requires the payment to the State or States of the purchase money received for swamp lands, upon due proof, by the authorized agent of the State or States before the Commissioner of the General Land Office, that the lands purchased of the United States were swamp lands within the meaning of the act of 1850."

The affidavit communicated by you hardly tends to prove the supposed fact. If they were "swamp and overflowed lands," made unfit thereby "for cultivation," it is very easy to prove it.

"These claims are set up, it is to be remembered, for lands which have been entered from the general government. The presump-
348 tion is that they were fit for cultivation, or they would not have been entered. That presumption may be overcome, but it should be by some other testimony than the belief of any witness expressed in an ex parte affidavit. If the form of affidavit presented is in pursuance of any order of the department, the order had better be changed, as it is insufficient. The testimony of the person who entered the land, and present occupant, ought, in all cases, to be required, or some good excuse furnished for not producing it."

"The affidavit should state facts, and the particular knowledge of

the deponent, upon which the Commissioner forms his conclusions, and not take that of the witness. His belief amounts to nothing at all. A case made upon the testimony of less than two reputable witnesses should not be regarded, and they should, in all cases, be of such character, and have such means of knowledge, as to induce the Commissioner to believe that the best evidence has been produced, and the lands were unfit for cultivation within the definition given in the
349 circular of the 21st Nov., 1850."

"The claimant is required by the law to make the proof to the Commissioner's satisfaction."

Pursuant to this decision, and in accordance with existing requirements as modified by said decision, the following regulations are prescribed: 1st. Testimony in support of such indemnity awards must be the affidavits of at least two disinterested and respectable persons who have a personal and exact knowledge of the character of the lands claimed in its smallest legal subdivision, as it existed at the date of the swamp grant of 28th September, 1850, which affidavit must state the cause of swamp or overflow, designating the proportion of each tract that is claimed to be swampy and unfit for cultivation in its natural condition, the character and extent of the means employed in levees, embankments, or drains, in order to make the land purchased as arable really inhabitable as such. 2d. The proof should be the affidavit
350 of the person who purchased the land of the United States, and also the affidavit of the present occupant.

When the original purchaser is not resident in the State or had no knowledge of the character of the land in 1850, or at the date of purchase, or where the occupant is in like manner uninformed, or the tract is unoccupied, the facts may be established by two respectable and disinterested persons, resident nearest the land, and such cases the State agent must file with the testimony his own affidavit to the effect of the absence, want of information of the principal witnesses, or of the non-occupancy of the land, and that the persons whose testimony is presented are the nearest informed residents to the swamp premises, and are respectable, credible, and disinterested witnesses.

3d. The affidavit may be made before a magistrate authorized to administer oaths, or before a notary public under a seal; if by the former, his official character must be certified under seal, and the charac-
351 ter and credibility of the witnesses must also be certified by the officer administering the oaths.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

(Copy filed.)

352 STATE OF IOWA,
Adams County:

I, J. P. Cummins, county auditor of Adams County, Iowa, hereby certify that the above & foregoing two printed circulars, marked A & B—the one marked "A" dated at New York city, July 24th, 1862, signed S. P. Lyman, secretary and ch'm ex. board of A. E. C., purporting to be issued by American Emigrant Company; the one marked "B," signed by A. B. Miller, register, dated Des Moines, June 20th, 1862, and also signed J. M. Edmunds, Commissioner, dated May 31st, 1862—are the original circulars found among swamp land papers now on file in my office; that I have made diligent search, and these two circulars are all the printed matters relating to swamp lands to be found in my office.

Witness my hand & seal of the board of supervisors, this 2d day of January, A. D. 1872.

[SEAL.]

J. P. CUMMINS,
Co. Auditor, Adams Co., Iowa.

353 (Endorsed:) U. S. C. C. No. 168. I. Adams County vs. the American Emigrant Company. Equity 168. Printed circular of S. P. Lyman, ch'm of executive board. 2nd, printed instructions of J. M. Edmunds to gov. of Iowa. Package No. 9; cost, $1. Filed Mar. 22nd, 1872. George B. Corkhill, clerk.

354 STATE OF IOWA:

STATE LAND OFFICE,
Des Moines, Jan'y 15, 1872.

I, Aaron Brown, register of the State land office of the State of Iowa, hereby certify that the following is a true and correct copy of the original communication of the Commissioner of the General Land Office to the governor of Iowa, dated May 31st, 1862, and filed in this office June 18th, 1862.

I testimony whereof I have hereunto set my hand and affixed my official seal the date first above written.

[SEAL.]

AARON BROWN,
Register.

355 GENERAL LAND OFFICE,
May 31st, 1862.

His excellency the governor of Iowa, Des Moines, Iowa:

SIR: Certain proof sent by the authorities of Iowa in the matter of a claim for swamp indemnity, under the act of Congress approved 2d March, 1855, volume 10, page 634, chapter 147, having recently undergone the revision of the Secretary of the Interior for his approval, if satisfactory, of the Commissioner's opinion, as the law requires, the Secretary has rendered a decision in which, whilst it does not disturb any case in which proof has been heretofore filed in accordance with requirements, lays down in respect to all testimony hereafter to be taken in support of such claim the following principles:

"The second section of the act of March 2, 1855, requires the payment to the State or States of the purchase money received for swamp lands upon due proof by the authorized agent of the State or States, before the Commissioner of the General Land Office, that the lands purchased of the United States were swamp lands within the meaning of the act of 1850."

356 "The affidavit communicated by you hardly tends to prove the supposed fact. If they were 'swamp and overflowed lands,' made unfit thereby 'for cultivation,' it is very easy to prove it."

"These claims are set up, it is to be remembered, for lands which have been entered from the general government. The presumption is that they were fit for cultivation, or they would not have been entered. That presumption may be overcome, but it should be by some other testimony than the belief of any witness expressed in an ex-parte affidavit. If the form of affidavit presented is in pursuance of any order of the department, the order had better be changed, as it is insufficient. The testimony of the person who entered the land and present occupant ought in all cases to be required, or some good excuse furnished for not producing it."

"The affidavit should state facts and the particular knowledge of the deponent upon which the Commissioner forms his conclusions, and not take that of the witness. His belief amounts to nothing
357 at all. A case made upon the testimony of less than two reputable witnesses should not be regarded, and they should in all cases be of such character and have such means of knowledge as to induce the Commissioner to believe that the best evidence has been produced, and that the lands were unfit for cultivation within the definition given in the circular of the 21st Nov., 1850."

"The claimant is required by the law to make the proof to the Commissioner's satisfaction."

Pursuant to this decision, and in accordance with existing requirements as modified by said decision, the following regulations are prescribed:

1st. Testimony in support of such indemnity awards must be the affidavits of at least two disinterested and respectable persons who have a personal and exact knowledge of the character of the land claimed in its smallest legal subdivisions as it existed at the date of the swamp-grant of 28th September, 1850, which affidavits must state the
358 causes of swamp or overflow, designating the proportion of each tract that is claimed to be swampy and unfit for cultivation in its natural condition, the character and extent of the means employed in levees, embankments, or drains, in order to make the land purchased as arable really inhabitable as such.

2d. The proof should be the affidavit of the person who purchased the land of the United States, and also the affidavit of the present occupant. Where the original purchaser is not resident in the State, or had no knowledge of the character of the land in 1850, or at the date of purchase, or where the occupant is in like manner uninformed, or the tract is unoccupied, the facts may be established by two respectable and disinterested persons resident nearest the land, and such cases the State agent must file with the testimony his own affidavit to the effect of the absence, want of information of the principal witnesses, or of the non-occupancy of the land, and that the persons whose testimony is presented are the nearest informed residents to the swamp premises, and are
359 respectable, credible, and disinterested witnesses.

3d. The affidavits may be made before a magistrate authorized to administer oaths, or before a notary public under a seal. If by the former, his official character must be certified under seal, and the character and credibility of the witnesses must also be certified by the officer administering the oaths.

You will be pleased to acknowledge the receipt hereof.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

(Endorsed:) Adams County vs. American Emigrant Company. U. S. circuit court. Equity, No. 168. Plaintiff's evidence. Package 10. Instructions of Commissioner, G. L. O. to the governor. Costs $1.40. Filed Mar. 22, 1872. George B. Corkhill, clerk.

360 II.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
February 10, 1872.

I, Willis Drummond, Commissioner of the General Land Office, do

hereby certify that the annexed paper, marked "A," containing six pages, is a true and literal copy of the original list of swamp land selections in the Missouri River land district, Iowa, so far as the same relates to townships 71, 72, & 73 N, of ranges 32, 33, 34, & 35 west, being within the county of Adams, and State aforesaid, reported to this office by Warner Lewis, U. S. surveyor general for the State of Iowa, with his letter of Sept. 21, 1854, to the Commissioner of the General Land Office, and that the annexed paper, marked "B," is a true copy of the affidavit of Waitman Trippett, taken before the county judge of Adams County, Iowa, relative to the character of the lands contained in the above-described list A, and that the annexed paper, marked "C,"
361 is a true copy of the letter of the Secretary of State of the State of Iowa, dated July 6, 1854, transmitting a list containing the lands described in the above list A to Warner Lewis, U. S. surveyor-general for the State of Iowa, for his action and decision thereon, and that the annexed paper, marked "D," is a true copy of the letter of Warner Lewis, U. S. surveyor-general for the State of Iowa, to the Commissioner of the General Land Office, dated Sept. 21, 1854, accompanying a list containing the lands described in the aforesaid list A, and that the annexed papers, marked "E," embracing four pages, are true copies of the lists of lands in Adams County, Iowa, on which the claim of the State of Iowa for indemnity in cash has been awarded and paid, with the date of adjustment, number of report of the Gen. Land Office, and amount of award thereto appended; and that the annexed papers, marked "F," embracing three pages, are true copies of
362 the lists of lands in Adams County, Iowa, on which the claim of the State of Iowa for indemnity in other lands has been awarded, with the date of adjustment, the date of the approval of the Secretary of the Interior, the numbers of the indemnity certificates issued, the amounts awarded, and the dates of transmission of said certificates to the governor of Iowa thereto appended; and that the annexed paper, marked "G," is a true copy of one of the affidavits filed by the State of Iowa, claiming indemnity for the tract of land therein described, sworn to before Frank M. Davis, notary public, which affidavits were the basis on which indemnity was granted for the tract of land therein described; and that the annexed paper, marked "H," is a true copy of the letter of the register of the U. S. land office at Des Moines, Iowa, transmitting such affidavits to the Commissioner of the General Land Office, dated Oct. 26, 1861; and that the annexed paper, marked "I," is a true copy of the letter of the Commissioner of the General
363 Land Office, dated Nov. 1, 1861, acknowledging the receipt of such affidavits.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington the day and year above written.

[SEAL.] (Signed) WILLIS DRUMMOND,
Commissioner of the General Land Office.

Amount of fees required by law, including certificate, $8.55.

364 A.

List of swamp lands in the Missouri River land district, Iowa.

Parts of sections.	S.	T.	R.	Area.	Remarks.
W. fr. ½ of N. W. ¼	31	72	35	52.70	Part timber 4 feet.
S. W. fr. ¼	30	"	"	132.20	Swamp.
N. W. fr. ¼	"	"	"	132.60	"
N. E. ¼	"	"	"	160.00	"
N. ½ of S. E. ¼	"	"	"	80.00	"
S. W. ¼ of S. E. ¼	"	"	"	40.00	"
N. W. ¼	29	"	"	160.00	"
N. E. ¼	....	"	"	160.00	Overf's 3 feet.
S. E. ¼	20	"	"	160.00	Swamp.
S. ½ of S. W. ¼	....	"	"	80.00	"
S. ½ of S. W. ¼	21	"	"	80.00	"
N. E. ¼ of S. W. ¼	"	"	"	40.00	Timber overflows 3 feet.
E. ½ of N. W. ¼	"	"	"	80.00	Part timber " "
N. E. ¼	"	"	"	160.00	" " " "
W. ½ of S. E. ¼	"	"	"	80.00	Swamp.
N. W. ¼	22	"	"	160.00	"
S. W. ¼	15	"	"	160.00	"
S. ½ of N. W. ¼	"	"	"	80.00	"
N. ½ of S. E. ¼	"	"	"	80.00	"
N. E. ¼	"	"	"	160.00	"
N. W. ¼	14	"	"	160.00	Part timber & overf's 4 feet.
N. ½ of S. W. ¼	14	"	"	80.00	Swamp.
N. ½ of N. E. ¼	14	"	"	80.00	"
S. E. ¼	11	"	"	160.00	"
W. ½ of S. W. ¼	12	"	"	80.00	"
N. W. ¼	12	"	"	160.00	"
365 S. W. ¼ of N. E. ¼	12	72	35	40.00	Swamp.
S. E. ¼ of N. E. ¼	"	"	"	40.00	Heavy timber & overflows 4 feet.
S. E. ¼ of S. E. ¼	36	"	"	40.00	" " " "
W. ½ of S. E. ¼	31	73	34	80.00	" " " "
N. E. ¼ of S. E. ¼	"	"	"	40.00	Swamp " "
E. ½ of N. E. ¼	"	"	"	80.00	" " "
N. W. ¼ of N. W. ¼	32	"	"	40.00	" " "
S. ½ of S. W. ¼	29	"	"	80.00	" " "
N. E. ¼	28	"	"	160.00	" " 2 feet.
N. ½ of N. W. ¼	27	"	"	80.00	" " "
N. E. ¼	27	"	"	160.00	" " "
S. E. ¼ of S. W. ¼	22	"	"	40.00	Heavy timber & overfl's 4 feet.
S. W. ¼ of S. E. ¼	22	"	"	40.00	" " " " "
N. W. ¼ of S. E. ¼	22	73	34	40.00	Timber & overfl's 4 feet.
E. ½ of N. E. ¼	"	"	"	80.00	" " " "
W. ½ of N. W. ¼	23	"	"	80.00	Swamp & " 2 "
S. E. ¼ of S. E. ¼	15	"	"	40.00	" " " "
S. ½ of S. W. ¼	14	"	"	80.00	Swamp.
W. ½ of S. E. ¼	14	"	"	80.00	"
E. ½ of N. E. ¼	14	"	"	80.00	Heavy timber & overflows 3 feet.
S. E. ¼ of S. E. ¼	11	"	"	40.00	Swamp.
N. ½ of N. W. ¼	13	"	"	80.00	Part timber & swamp.
S. W. ¼ of N. W. ¼	13	"	"	40.00	Heavy timber & overflows 3 feet.
N. ½ of N. E. ¼	"	"	"	80.00	Swamp.
S. ½ of S. W. ¼	12	"	"	80.00	"
366 S. E. ¼	12	73	34	160.00	Swamp.
E. ½ of N. E. ¼	"	"	"	80.00	"
W. fr. ½ of N. W. ¼	7	73	33	83.72	Swamp & overf's 4 feet.
W. fr. ½ of S. W. ¼	"	"	"	84.86	" " " "
N. E. ¼ of N. W. ¼	"	"	"	40.00	" " " "
N. W. ¼ of S. E. ¼	"	"	"	40.00	Timber, overflows 2 feet.
S. fr. ½ of S. W. ¼	6	"	"	81.79	Swamp.
S. ½ of S. E. ¼	6	"	"	80.00	Swamp & overflows 2 feet.
N. E. ¼ of S. E. ¼	"	"	"	40.00	Heavy timber & swamp.
E. fr. ½ of N. E. ¼	"	"	"	76.38	Swamp.

A.—*List of swamp lands, &c.*—Continued.

Parts of sections.	S.	T.	R.	Area.	Remarks.
N. W. fr. ¼ of N. W. ¼	5	73	33	36.43	Swamp.
S. E. ¼	31	71	35	160.00	"
E. ½ of S. W. ¼	"	"	"	80.00	"
N. W. ¼	"	"	"	145.13	Swamp & overflows 2 feet.
W. ½ of N. E. ¼	"	"	"	80.00	Swamp.
S. W. fr. ¼	30	"	"	143.99	"
S. E. ¼ of N. W. ¼	"	"	"	40.00	"
W. ½ of S. E. ¼	"	"	"	80.00	"
N. E. ¼	"	"	"	160.00	"
W. ½ of N. W. ¼	29	"	"	80.00	Part timber, swamp.
N. E. ¼ of N. W. ¼	"	"	"	40.00	" " "
W. ½ of S. W. ¼	20	"	"	80.00	Swamp.
S. E. ¼ of S. W. ¼	"	"	"	40.00	"
W. ½ of N. W. ¼	"	"	"	80.00	Part timber & overflows 3 feet.
S. E. ¼ of S. E. ¼	19	"	"	40.00	" " " "
367 S. ½ of S. W. ¼	17	71	35	80.00	Swamp.
S. W. ¼ of S. E. ¼	"	"	"	40.00	"
N. ½ of S. E. ¼	"	"	"	80.00	"
N. E. ¼	"	"	"	160.00	"
W. ½ of N. W. ¼	15	"	"	80.00	"
N. E. ¼ of N. W. ¼	"	"	"	40.00	"
E. ½ of S. W. ¼	10	"	"	80.00	"
S. E. ¼	"	"	"	160.00	"
S. E. ¼ of N. E. ¼	"	"	"	40.00	"
S. W. ¼	11	"	"	160.00	Swamp & overflows 2 feet.
S. ½ of N. W. ¼	"	"	"	80.00	" " "
N. E. ¼ of N. W. ¼	"	"	"	40.00	Swamp.
N. E. ¼	"	"	"	160.00	"
S. E. ¼	"	"	"	160.00	"
S. E. ¼ of S. E. ¼	2	"	"	40.00	"
W. ½ of S. W. ¼	1	"	"	80.00	"
S. E. ¼ of N. W. ¼	"	"	"	40.00	"
N. W. ¼	12	"	"	160.00	"
S. ½ of N. E. ¼	"	"	"	80.00	"
N. W. ¼ of N. E. ¼	"	"	"	40.00	"
E. ½ of S. E. ¼	"	"	"	80.00	"
S. W. ¼ of N. W. ¼	7	71	34	48.24	"
W. fr. ½ of S. W. ¼	"	"	"	94.95	Swamp & overflows 2 feet.
S. ½ of S. E. ¼	"	"	"	80.00	Part timber.
N. E. ¼ of S. E. ¼	"	"	"	40.00	Swamp.
338 N. E. ¼ of N. W. ¼	18	71	34	40.00	Swamp.
N. W. ¼ of N. E. ¼	18	"	"	40.00	"
N. ½ of S. W. ¼	8	"	"	80.00	Swamp & overflowed 2 feet.
N. W. ¼ of S. E. ¼	"	"	"	40.00	" " "
E. ½ of N. E. ¼	"	"	"	80.00	" " "
S. E. ¼ of S. E. ¼	5	"	"	40.00	Swamp.
N. ½ of N. W. ¼	9	"	"	80.00	" & part timber.
N. ½ of N. E. ¼	9	"	"	80.00	" " "
S. W. ¼ of S. W. ¼	4	"	"	40.00	" " "
S. E. ¼ of S. E. ¼	"	"	"	40.00	Swamp.
S. W. ¼ of S. W. ¼	3	"	"	40.00	" & part timber.
N. E. ¼ of S. W. ¼	"	"	"	40.00	" " "
S. W. ¼ of N. E. ¼	"	"	"	40.00	" " "
N. E. fr. ¼ of N. E. ¼	"	"	"	37.36	" " "
N. fr. ½ of N. W. ¼	2	71	34	75.15	Swamp & part timber.
N. W. fr. ¼ of N. E. ¼	"	"	"	37.23	" " " "
S. W. ¼ of S. E. ¼	35	72	34	40.00	Swamp.
N. E. ¼ of S. E. ¼	"	"	"	40.00	"
S. ½ of N. E. ¼	"	"	"	80.00	"
N. ½ of S. W. ¼	36	"	"	80.00	"
S. ½ of N. W. ¼	"	"	"	80.00	"
N. E. ¼ of N. W. ¼	"	"	"	40.00	"
N. E. ¼	"	"	"	160.00	"

A.—*List of swamp lands, &c.*—Continued.

Parts of sections.	S.	T.	R.	Area.	Remarks.
S. E. ¼ of S. E. ¼	25	72	34	40.00	Swamp.
S. fr. ¼ of S. W. ¼	31	"	"	84.34	Swamp & overflowed 2 feet.
369 N. E. ¼ of S. W. ¼	31	72	34	40.00	Swamp.
N. W. ¼ of N. E. ¼	"	"	"	40.00	"
E. ½ of S. E. ¼	30	"	"	80.00	"
S. fr. ½ of S. W. ¼	6	"	"	88.70	Heavy timber, overflows 4 feet.
N. W. ¼ of N. W. ¼	7	"	"	49.26	" " " "
N. E. fr. ¼	6	"	"	145.15	Swamp.
S. W. ¼ of S. E. ¼	"	"	"	40.00	" & overflows 2 feet.
W. fr. ½ of N. W. ¼	31	72	33	99.61	Swamp, part timber.
S. W. fr. ¼	30	"	"	182.11	
N. ½ of N. W. ¼	"	"	"	103.21	91.74 (in red)
S. E. ¼ of N. W. ¼	"	"	"	40.00	Swamp, heavy timber.
N. W. ¼ of N. E. ¼	"	"	"	40.00	Swamp.
S. ½ of N. E. ¼	"	"	"	80.00	"
N. ½ of S. E. ¼	"	"	"	80.00	"
N. W. ¼	29	"	"	160.00	" part timber.
N. E. ¼	29	"	"	160.00	" " "
S. W. ¼ of S. W. ¼	21	"	"	40.00	" " "
N. W. ¼ of S. W. ¼	29	"	"	40.00	Swamp.
N. W. ¼	28	"	"	160.00	Part timber, overflows 4 f't.
N. ½ of N. E. ¼	28	"	"	80.00	" " " "
N. W. ¼ of N. W. ¼	27	"	"	40.00	" " " "
S. E. ¼ of N. W. ¼	"	"	"	40.00	" " " "
S. W. ¼ of N. E. ¼	"	"	"	40.00	" " " "
E. ½ of N. W. ¼	28	"	"	80.00	" " " "
N. W. ¼ of N. E. ¼	"	"	"	40.00	Swamp, heavy timber.
370 E. ½ of S. E. ¼	23	72	33	80.00	Swamp, part timber.
S. W. ¼ of S. E. ¼	"	"	"	40.00	" & overflows 4 feet.
E. ½ of N. E. ¼	"	"	"	80.00	" " " " "
W. ½ of N. W. ¼	24	"	"	80.00	" & part heavy timber.
W. ½ of S. W. ¼	13	"	"	80.00	" " " "
N. E. ¼ of S. W. ¼	"	"	"	40.00	"
N. ½ of S. E. ¼	"	"	"	80.00	" part timbered.
S. E. ¼ of N. E. ¼	"	"	"	40.00	"
N. W. fr. ¼	18	72	32	151.29	Swamp & ove'f'd 3 feet deep.
S. ½ of N. E. ¼	"	"	"	80.00	" " " "
N. E. ¼ of N. E. ¼	"	"	"	40.00	" " " "
N. W. ¼ of N. W. ¼	17	"	"	40.00	" " " "
S. E. ¼ of S. W. ¼	8	"	"	40.00	" " " "
N. ½ of S. E. ¼	"	"	"	80.00	" " " "
S. E. ¼ of N. E. ¼	"	"	"	40.00	" " " "
S. W. ¼ of N. W. ¼	9	"	"	40.00	" " " "
N. E. ¼ of N. W. ¼	"	"	"	40.00	" " " "
E. ½ of S. W. ¼	4	"	"	80.00	Swamp, part timber.
S. E. ¼ of N. W. ¼	4	"	"	40.00	" " "
N. E. ¼ of S. W. ¼	33	73	32	40.00	"
N. ½ of S. E. ¼	"	"	"	80.00	" part timber.
S. W. ¼ of N. E. ¼	"	"	"	40.00	Swamp.

371

SURVEYOR GENERAL'S OFFICE,
Dubuque, Sept. 20th, 1854.

I, Warner Lewis, surveyor-general of the State of Iowa, do hereby certify that the foregoing list, marked , is a correct transcript of the original lists of selections made by the county surveyor or State locating agents; that the same has been carefully compared with the field-notes, plats, & other evidences on file in this office; and by the affidavit of said county surveyors, or State locating agents, it appears that the greater part of each smallest legal subdivision of the lands embraced in said list is swampy, or subject to such overflows as to render the same

unfit for cultivation, and therefore of the character contemplated by the act of 28th Sept., 1850.

(Signed) WARNER LEWIS,
Sur. Gen.

372 B.

I, Waitman Trippett, county surveyor of Adams County, do solemnly swear that I understand and have examined the lines bounding the tracts of land particularly designated in the lists hereunto affixed; and I do further solemnly swear that all lands designated in said lists, and each and every quarter-quarter section thereof "are swamp and overflowed lands," and of the character embraced by the law of Congress approved September 28th, 1850.

(Signed) WAITMAN TRIPPETT,
County Surveyor of Adams County, Iowa.

Sworn to and subscribed by said Waitman Trippett before me, at my office, in the town of Quincy, Adams County, Iowa, this 29th day of May, A. D. 1854.

[SEAL.] JOSEPH R. HOLBROOK,
Prosecuting Attorney, & Acting County Judge of Adams Co., Iowa.

373 C.

SECRETARY'S OFFICE, IOWA,
Iowa City, July 6, 1854.

W. LEWIS, Esqr.,
Surveyor General of Iowa, Wisconsin, and Minnesota:

SIR: The foregoing is the original list of swamp and overflowed lands lying in the county of Adams, State of Iowa, selected & returned to this office in accordance with laws, which I hereunto report to you for your action thereon.

Very resp't'y,

GEO. W. McCLEARY,
Sec'y of State.

374 D.

SURVEYOR GENERAL'S OFFICE,
Dubuque, Sept. 21st, 1854.

Hon. JOHN WILSON,
Commissioner of the Gen'l Land Office, Washington, D. C.:

SIR: I have the honor to acknowledge the receipt of your letter of the 15th July last, with the two lists of swamp land selections marked rejected.

Said lists have been again carefully compared with the maps, field-notes, & original lists on file in this office. In the absence of controversy, the oath of the selectors being of the most positive character, and this office having no right to doubt their credibility, I have appended my certificate, and return them to you.

Please find, also, lists of selections in the following-named land districts:

375	Two	lists,	marked	No.	4,	in the	Northern	Land	district.
	Two	"	"	"	5,	"	"	Dubuque	"	"
	One	"	"	"	3,	"	"	Missouri River	"	"
	Two	"	"	"	2,	"	"	Fairfield	"	"
	One	"	"	"	1,	"	"	Iowa City	"	"
	Two	"	"	"	6,	"	"	Chariton	"	"

Said lists complete all the selections that have been returned to this office to date.

I am, sir, very respectfully, your ob't servant,

WARNER LEWIS,
Sur. General.

376 *A list of lands in Adams County, district of Chariton, State of Iowa, selected under the swamp grant of Sept. 28th, 1850, of whose swampy character the State has submitted proof to the Commissioner of the General Land Office to obtain the indemnity provided by act of 2nd March, 1855, said lands having been sold for cash since the passage of said act of 1850, as follows:*

No. of case.	Parts of sections.	S.	T.	R.	Area.	Date of entry.	Number of certif.	Price per acre.	Amount.
			N.	W.					
	E. ½ of S. W. ¼ / S. E. ¼ of N. W. ¼	4	72	32	120	.....	.....	.....	.....
	S. E. ¼ of N. E. ¼	8	"	"	40	.....	.....	.....	.....
	S. W. ¼ of N. W. ¼ / N. E. ¼ of N. W. ¼	9	"	"	80	.....	.....	.....	.....
	S. E. ¼ of N. E. ¼	18	"	"	40	.....	.....	.....	.....
	N. W. ¼ of S. W. ¼	13	72	33	40	.....	.....	.....	.....
	N. E. ¼ of S. E. ¼	13	"	"	40	.....	.....	.....	.....
	N. W. ¼ of N. W. ¼	27	"	"	40	.....	.....	.....	.....
	S. E. ¼ of N. W. ¼	27	"	"	40	.....	.....	.....	.....
	S. W. ¼ of N. W. ¼	28	"	"	40	.....	.....	.....	.....
	N. W. ¼ of N. W. ¼	29	"	"	40	.....	.....	.....	.....
	N. E. ¼ of S. W. ¼	30	"	"	40	.....	.....	.....	.....
	W. ½ of S. W. ¼	30	"	"	102.11	.....	.....	.....	.....
	S. E. ¼ of N. W. ¼	30	"	"	40	.....	.....	.....	.....
	S. ½ of N. E. ¼	30	"	"	80	.....	.....	.....	.....

377 Indemnity claim on foregoing list adjusted Sept. 15, 1866. Sent to Compt. U. S. Treasury, Feb'y 15, 1867, with approval of Secretary of the Interior. Report No. 16,891, for $977.63.

(Endorsed:) No. 84. Adams County, Iowa. Cash indemnity under act 2nd March, 1855. Posted H. & W.

unfit for cultivation, and therefore of the character contemplated by the act of 28th Sept., 1850.

(Signed) WARNER LEWIS,
Sur. Gen.

372 B.

I, Waitman Trippett, county surveyor of Adams County, do solemnly swear that I understand and have examined the lines bounding the tracts of land particularly designated in the lists hereunto affixed; and I do further solemnly swear that all lands designated in said lists, and each and every quarter-quarter section thereof "are swamp and overflowed lands," and of the character embraced by the law of Congress approved September 28th, 1850.

(Signed) WAITMAN TRIPPETT,
County Surveyor of Adams County, Iowa.

Sworn to and subscribed by said Waitman Trippett before me, at my office, in the town of Quincy, Adams County, Iowa, this 29th day of May, A. D. 1854.

[SEAL.] JOSEPH R. HOLBROOK,
Prosecuting Attorney, & Acting County Judge of Adams Co., Iowa.

373 C.

SECRETARY'S OFFICE, IOWA,
Iowa City, July 6, 1854.

W. LEWIS, Esqr.,
Surveyor General of Iowa, Wisconsin, and Minnesota:

SIR: The foregoing is the original list of swamp and overflowed lands lying in the county of Adams, State of Iowa, selected & returned to this office in accordance with laws, which I hereunto report to you for your action thereon.

Very resp't'y,

GEO. W. McCLEARY,
Sec'y of State.

374 D.

SURVEYOR GENERAL'S OFFICE,
Dubuque, Sept. 21st, 1854.

Hon. JOHN WILSON,
Commissioner of the Gen'l Land Office, Washington, D. C.:

SIR: I have the honor to acknowledge the receipt of your letter of the 15th July last, with the two lists of swamp land selections marked rejected.

Said lists have been again carefully compared with the maps, field-notes, & original lists on file in this office. In the absence of controversy, the oath of the selectors being of the most positive character, and this office having no right to doubt their credibility, I have appended my certificate, and return them to you.

Please find, also, lists of selections in the following-named land districts:

375

Two	lists,	marked	No.	4,	in the	Northern	Land	district.
Two	"	"	"	5,	"	" Dubuque	"	"
One	"	"	"	3,	"	" Missouri River	"	"
Two	"	"	"	2,	"	" Fairfield	"	"
One	"	"	"	1,	"	" Iowa City	"	"
Two	"	"	"	6,	"	" Chariton	"	"

Said lists complete all the selections that have been returned to this office to date.

I am, sir, very respectfully, your ob't servant,

WARNER LEWIS,
Sur. General.

376 *A list of lands in Adams County, district of Chariton, State of Iowa, selected under the swamp grant of Sept. 28th, 1850, of whose swampy character the State has submitted proof to the Commissioner of the General Land Office to obtain the indemnity provided by act of 2nd March, 1855, said lands having been sold for cash since the passage of said act of 1850, as follows:*

No. of case.	Parts of sections.	S.	T.	R.	Area.	Date of entry.	Number of certif.	Price per acre.	Amount.
			N.	W.					
	E. ½ of S. W. ¼ } S. E. ¼ of N. W. ¼ }	4	72	32	120	.....	.....	.....	.....
	S. E. ¼ of N. E. ¼	8	"	"	40	.....	.....	.....	.....
	S. W. ¼ of N. W. ¼ } N. E. ¼ of N. W. ¼ }	9	"	"	80	.....	.....	.....	.....
	S. E. ¼ of N. E. ¼	18	"	"	40	.....	.....	.....	.....
	N. W. ¼ of S. W. ¼	13	72	33	40	.....	.....	.....	.....
	N. E. ¼ of S. E. ¼	13	"	"	40	.....	.....	.....	.....
	N. W. ¼ of N. W. ¼	27	"	"	40	.....	.....	.....	.....
	S. E. ¼ of N. W. ¼	27	"	"	40	.....	.....	.....	.....
	S. W. ¼ of N. W. ¼	28	"	"	40	.....	.....	.....	.....
	N. W. ¼ of N. W. ¼	29	"	"	40	.....	.....	.....	.....
	N. E. ¼ of S. W. ¼	30	"	"	40	.....	.....	.....	.....
	W. ½ of S. W. ¼	30	"	"	102.11	.....	.....	.....	.....
	S. E. ¼ of N. W. ¼	30	"	"	40	.....	.....	.....	.....
	S. ½ of N. E. ¼	30	"	"	80	.....	.....	.....	.....

377 Indemnity claim on foregoing list adjusted Sept. 15, 1866. Sent to Compt. U. S. Treasury, Feb'y 15, 1867, with approval of Secretary of the Interior. Report No. 16,891, for $977.63.

(Endorsed:) No. 84. Adams County, Iowa. Cash indemnity under act 2nd March, 1855. Posted H. & W.

unfit for cultivation, and therefore of the character contemplated by the act of 28th Sept., 1850.

(Signed) WARNER LEWIS,
Sur. Gen.

372 B.

I, Waitman Trippett, county surveyor of Adams County, do solemnly swear that I understand and have examined the lines bounding the tracts of land particularly designated in the lists hereunto affixed; and I do further solemnly swear that all lands designated in said lists, and each and every quarter-quarter section thereof "are swamp and overflowed lands," and of the character embraced by the law of Congress approved September 28th, 1850.

(Signed) WAITMAN TRIPPETT,
County Surveyor of Adams County, Iowa.

Sworn to and subscribed by said Waitman Trippett before me, at my office, in the town of Quincy, Adams County, Iowa, this 29th day of May, A. D. 1854.

[SEAL.] JOSEPH R. HOLBROOK,
Prosecuting Attorney, & Acting County Judge of Adams Co., Iowa.

373 C.

SECRETARY'S OFFICE, IOWA,
Iowa City, July 6, 1854.

W. LEWIS, Esqr.,
Surveyor General of Iowa, Wisconsin, and Minnesota:

SIR: The foregoing is the original list of swamp and overflowed lands lying in the county of Adams, State of Iowa, selected & returned to this office in accordance with laws, which I hereunto report to you for your action thereon.

Very resp't'y,

GEO. W. McCLEARY,
Sec'y of State.

374 D.

SURVEYOR GENERAL'S OFFICE,
Dubuque, Sept. 21st, 1854.

Hon. JOHN WILSON,
Commissioner of the Gen'l Land Office, Washington, D. C.:

SIR: I have the honor to acknowledge the receipt of your letter of the 15th July last, with the two lists of swamp land selections marked rejected.

Said lists have been again carefully compared with the maps, field-notes, & original lists on file in this office. In the absence of controversy, the oath of the selectors being of the most positive character, and this office having no right to doubt their credibility, I have appended my certificate, and return them to you.

Please find, also, lists of selections in the following-named land districts:

375

Two	lists,	marked	No.	4,	in the	Northern	Land	district.
Two	"	"	"	5,	" "	Dubuque	"	"
One	"	"	"	3,	" "	Missouri River	"	"
Two	"	"	"	2,	" "	Fairfield	"	"
One	"	"	"	1,	" "	Iowa City	"	"
Two	"	"	"	6,	" "	Chariton	"	"

Said lists complete all the selections that have been returned to this office to date.

I am, sir, very respectfully, your ob't servant,

WARNER LEWIS,
Sur. General.

376 *A list of lands in Adams County, district of Chariton, State of Iowa, selected under the swamp grant of Sept. 28th, 1850, of whose swampy character the State has submitted proof to the Commissioner of the General Land Office to obtain the indemnity provided by act of 2nd March, 1855, said lands having been sold for cash since the passage of said act of 1850, as follows:*

No. of case.	Parts of sections.	S.	T.	R.	Area.	Date of entry.	Number of certif.	Price per acre.	Amount.
			N.	W.					
	E. ½ of S. W. ¼ } S. E. ¼ of N. W. ¼ }	4	72	32	120	.....	.....	.....	.....
	S. E. ¼ of N. E. ¼	8	"	"	40	.....	.....	.....	.....
	S. W. ¼ of N. W. ¼ } N. E. ¼ of N. W. ¼ }	9	"	"	80	.....	.....	.....	.....
	S. E. ¼ of N. E. ¼	18	"	"	40	.....	.....	.....	.....
	N. W. ¼ of S. W. ¼	13	72	33	40	.....	.....	.....	.....
	N. E. ¼ of S. E. ¼	13	"	"	40	.....	.....	.....	.....
	N. W. ¼ of N. W. ¼	27	"	"	40	.....	.....	.....	.....
	S. E. ¼ of N. W. ¼	27	"	"	40	.....	.....	.....	.....
	S. W. ¼ of N. W. ¼	28	"	"	40	.....	.....	.....	.....
	N. W. ¼ of N. W. ¼	29	"	"	40	.....	.....	.....	.....
	N. E. ¼ of S. W. ¼	30	"	"	40	.....	.....	.....	.....
	W. ½ of S. W. ¼	30	"	"	102.11	.....	.....	.....	.....
	S. E. ¼ of N. W. ¼	30	"	"	40	.....	.....	.....	.....
	S. ½ of N. E. ¼	30	"	"	80	.....	.....	.....	.....

377 Indemnity claim on foregoing list adjusted Sept. 15, 1866. Sent to Compt. U. S. Treasury, Feb'y 15, 1867, with approval of Secretary of the Interior. Report No. 16,891, for $977.63.

(Endorsed:) No. 84. Adams County, Iowa. Cash indemnity under act 2nd March, 1855. Posted H. & W.

A list of lands in Adams County, Chariton, and Council Bluffs districts' State of Iowa, selected under the swamp grant of Sept. 28, 1850, of whose swampy character the State has submitted proof to the Commissioner of the General Land Office to obtain the indemnity provided by act of 2nd March, 1855, said lands having been sold for cash since the the *passage of said act of* 1850.

378

No. of case.	Parts of sections.	S.	T.	R.	Area.	Date of entry.	Number of certific.	Price per acre.	Amount.
	S. W. ¼ of N. W. ¼	18	73	32	35.67				
	S. W. ¼ " N. E. ¼	18	"	"	40				
	N. E. ¼ " S. W. ¼	33	73	32	40				
	S. E. ¼ " S. E. ¼	23	72	33	40				
	W. ½ " N. W. ¼	24	"	"	80				
	N. W. ¼ " N. E. ¼	26	"	"	40				
	N. E. ¼ " N. W. ¼	26	"	"	40				
	N. E. ¼ " N. E. ¼	28	"	"	40				
	N. W. ¼ " N. E. ¼	28	"	"	40				
	S. E. ¼ of N. E. ¼ N. E. ¼ " S. E. & S. E. ¼ " S. E.	6	73	33	120				
	N. E. ¼ " S. W. ¼	10	71	35	40				
	W. ½ " S. E. ¼	17	"	"	80				

Indemnity claim on the above list adjusted Aug. 16, 1866. Sent to First Compt. U. S. Treasury Oct. 2, 1866, with approval of Sec'y of Interior. Report 16,600, for $794.58.

379 *A list of lands in Adams County, in the Council Bluffs District, Iowa, selected under the swamp grant of Sept. 28, 1850, and for which the State appears to be entitled to indemnity under act of 2nd March, 1855, she having presented satisfactory proof to the Commissioner of the General Land Office that they are really swamp, and the same having been sold for cash since the passage of said grant of 1850.*

No. of case.	Parts of sections.	S.	T.	R.	Area.	Date of entry.	Number of certific.	Price per acre.	Amount.
	N. ½ N. W. ¼	2	71	34	75. 15				
	S. W. ¼ S. W. ¼	4	"	"	40				
	S. E. ¼ S. E. ¼	4	"	"	40				
	S. ½ S. E. ¼	7	"	"	80				
	N. W. ¼ S E. ¼	8	"	"	40				
	N. E. ¼ N. E. ¼	8	"	"	40				
	S. E. ¼ N. E. ¼	8	"	"	40				
	N. ½ N, E. ¼	9	"	"	80				
	N. E. ¼ N. W. ¼	9	"	"	40				
	S. E. ¼ N. E. ¼	6	72	34	40				
	N. W. ¼ N, W. ¼	7	"	"	49. 26				
	S. E. ¼ S. E. ¼	25	"	"	40				
	S. W. ¼ S. W. ¼	31	"	"	44. 34				
	N. E. ¼ S. W. ¼	31	"	"	40				
	S. W. ¼ S. E. ¼ & N. E. ¼ S. E. ¼	35	"	"	80				
380	N. W. ¼ S. E. ¼	12	73	34	40				
	S. E. ¼ S. W. ¼	12	"	"	40				
	S. W. ¼ S. W. ¼	12	"	"	40				
	S. W. ¼ S. W. ¼	12	73	34	40				
	S. W. ¼ S. W. ¼	14	"	"	40				
	S. E. ¼ N. E. ¼	14	"	"	40				
	S. W. ¼ S. E. ¼	22	"	"	40				
	N. W. ¼ N. W. ¼	23	"	"	40				
	N. E. ¼ S. E. ¼	31	"	"	40				
	S. E. ¼ N. E. ¼	31	"	"	40				
	S. E. ¼ N. W. ¼	1	71	35	40				
	S. E. ¼ S. E. ¼	2	"	"	40				
	S. E. ¼ S. W. ¼	10	"	"	40				
	S. W. ¼ S. E. ¼	11	"	"	40				
	N. E. ¼ N. E. ¼	11	"	"	40				
	S. E. ¼ N. W. ¼	11	"	"	40				
	S. E. ¼ S. W. ¼	11	"	"	40				
	S. W. ¼ S. W. ¼	11	"	"	40				
	N. E. ¼ S. W. ¼	11	"	"	40				
	N. W. ¼ S. W. ¼	11	"	"	40				
	N. ½ N. W. ¼	12	"	"	80				
	S. ½ N. E. ¼	12	"	"	80				
	S. E. ¼ N. W. ¼	12	"	"	40				
	S. E. ¼ S. E. ¼	12	"	"	40				
	N. E. ¼ N. W. ¼	15	"	"	40				
	S. W. ¼ S. W. ¼	17	"	"	40				
	S. W. ¼ S. W. ¼	20	"	"	40				
381	N. E. ¼ N. W. ¼	29	71	35	40				
	S. W. ¼ N. W. ¼	29	"	"	40				
	S. W. ¼ S. E. ¼	30	"	"	40				
	W. ½ S. W. ¼	30	"	"	63. 99				
	E. ½ N. E. ¼	30	"	"	80				
	W. ½ N. W. ¼	31	71	35	65. 13				
	N. E. ¼ S. W. ¼	31	"	"	40				
	S. W. ¼ N. E. ¼	12	72	35	40				
	E. ½ N. W. ¼	14	....	....	80				

A list of lands in Adams County, &c.—Continued.

No. of case.	Parts of sections.	S.	T.	R.	Area.	Date of entry.	Number of certific.	Price per acre.	Amount.
	N. W. ¼ N. E. ¼	14			40				
	N. W. ¼ N. W. ¼	14			40				
	N. W. ¼ S. W. ¼	14			40				
	N. E. ¼ S. W. ¼	14			40				
	N. E. ¼ N. E. ¼	15			40				
	S. W. ¼ S. W. ¼	15			40				
	N. W. ¼ S. W. ¼	15			40				
	N. W. ¼ S. W. ¼	15			40				
	S. E. ¼ S. W. ¼	15			40				
	N. E. ¼ S. E. ¼	15			40				
	S. W. ¼ N. E. ¼	21			40				
	N. W. ¼ N. E. ¼	21			40				
	N. E. ¼ N. W. ¼	21			40				
	S. E. ¼ S. W. ¼	21			40				
	N. E. ¼ S. W. ¼	21			40				
	S. E. ¼ N. W. ¼	21			40				
	S. W. ¼ S. W. ¼	21			40				
	N. E. ¼ N. E. ¼	21			40				
332	S. E. ¼ N. W. ¼	22			40				
	S. E. ¼ N. E. ¼	21			40				
	N. E. ¼ N. W. ¼	22			40				
	N. W. ¼ N. W. ¼	22			40				
	W. ½ S. W. ¼	30			52.20				
	W. ½ N. W. ¼	31			52.70				
	S. E. ¼ S. E. ¼	36			40				

Indemnity claim on the foregoing list adjusted Jan. 16, 1865. Sent to Compt. U. S. Treasury March 9, 1865, with approval of Sec'y of Interior. Report No. 15727, for $4,303.45.

383 F.

A list of lands in Adams County, in the Council Bluffs District, Iowa, selected under the swamp grant of Sept. 28, 1850, *and for which the State appears to be entitled to other lands under act of 2nd March,* 1855, *she having presented satisfactory proof to the Comm't of the General Land Office that they are really swamp, and the same having been located with military warrants since the passage of said grant of* 1850:

No of case.	Parts of sections.	S.	T.	R.	Area.	Date of location.	Number of warrant.	Act.	Acres.
	N. W. ¼ of N. W. ¼.	9	71	34	40				
	S. E. ¼ " S. W. ¼..	6	72	34	40				
	S. W. ¼ " S. W. ¼..	6	"	"	68.70				
	N. ½ " S. W. ¼..	36	"	"	80				
	S. W. ¼ " S. E. ¼..	14	73	34	40				
	E. ½ " N. E. ¼..	22	"	"	80				
	N. W. ¼ " N. E. ¼..	11	71	35	40				
	N. E. ¼ " S. E¼. ..	12	"	"	40				
	N. E. ¼ " N. W. ¼.	31	"	"	40				
	S. E. ¼ " N. W. ¼..	31	"	"	40				
	S. W. ¼ " N. E. ¼..	31	"	"	40				
	N. W. ¼ " N. E. ¼..	31	"	"	40				
	N. E. ¼ " N. E. ¼..	12	72	35	40				
	N. E. ¼ " N. E. ¼..	14	"	"	40				
	S. W. ¼ " S. E. ¼..	21	"	"	40				
	N. W. ¼ " S. E. ¼..	21	"	"	40				

384 Indemnity claim on the above list adjusted Apr. 3, 1863. Approved by the Secretary of the Interior Apr. 5, 1863. Indemnity certificate No. 8 for 748.70 acres sent to the governor of Iowa Apr. 10, 1863.

A list of lands in Adams County, Chariton District, State of Iowa, selected under the swamp grant of Sept. 28, 1850, *of whose swampy character the State had submitted proofs to the Commissioner of the General Land Office to obtain the indemnity provided by act of March* 2, 1855, *said land having been located with military bounty land warrants and scrip since the passage of said act of* 1850, *as follows:*

No. of case.	Parts of sections.	S.	T.	R.	Area.	Date of location.	Number of warrant.	Act.	Acres.
	W. ½ of S. E. ¼...	33	73	32	80				
	S. W. ¼ " S. E. ¼...	23	73	33	40				
	S. E. ¼ " N. W. ¼..	26	"	"	40				
	N. W. ¼ " N. W. ¼.	28	"	"	40				

Indemnity claim on the above list adjusted August 14, 1866. Approved by the Secretary of the Interior August 16, 1866. Indemnity certificate No. 80 for 200 acres sent to governor of Iowa August 18, 1866.

385 *A list of lands in Adams County, Chariton District, State of Iowa, selected under the swamp grant of Sept.* 28, 1850, *of whose swampy the State has submitted proof to the Commissioner of the General Land Office to obtain the indemnity provided by act of* 2 *March*, 1855, *said lands having been located with military bounty land warrants since the passage of said act of* 1850, *as follows:*

No. of case.	Parts of sections.	S.	T.	R.	Area.	Date of location.	Number of warrant.	Act.	Acres.
	N. E. ¼ of N. E. ¼...	29	72	33	40	.....	.....	.....	.....
	N. W. ¼ of N. E. ¼...	29	"	"	40	.....	.....	.....	.....

Indemnity claim on the above tracts adjusted April 20, 1868. Approved by the Secretary of the Interior April 22, 1868. Indemnity certificate No. 90 for 80 acres sent to governor of Iowa Oct. 19, 1869.

386 G.

STATE OF IOWA,
Adams County:

I, Elijah Walter, of the county of Adams, State of Iowa, being duly sworn, depose and say that I reside in the county of Adams; that I am well acquainted with the following described tract of land, to wit, southwest fourth of the northwest quarter of section eighteen (18) in township seventy-two (72) north, range thirty-two (32), west of 5th principal meridian, containing 35 acres and 67 hundre'ths of an acre, and which was entered with cash by one Richard Edwards, as he is informed and believes, and that the said Richard Edwards paid therefor 44 dollars and 58 cents, for which he received duplicate receipt, number 1664.

I further say that I have known the said land for the last twelve years; that I have lately surveyed the same with the aid of the county surveyor of Adams County, Iowa, and competent chairman under
387 oath, and know all the corners of said land, and that the greater part of said tract of land was, on the 28th day of September, 1850, and still is, swampy, and subject to such regular periodical overflows both at the planting, growing, and harvesting season, as would materially injure and destroy a crop, and as such rightfully inured to the State of Iowa, under the provisions of an act of Congress, approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits."

I further depose and say that Richard Edwards is a non-resident of Iowa.

(Signed) ELIJAH WALTER.

I certify that E. Walter signed the above affidavit in my presence, and was duly sworn to the same before me this day.

Witness my hand and notarial seal this 25th day of July, A. D. 1861.

[SEAL.] (Signed) FRANK M. DAVIS,
Notary Public.

388 STATE OF IOWA,
Adams County:

I, W. Krissinger, of the county of Adams, State of Iowa, being duly sworn, depose and say that I reside in the county of Adams; that I am

well acquainted with the following-described tract of land, to wit, southwest q'r of northwest q'r of section eighteen (18), in township seventy-two (72) north, thirty-two (32) west of 5th principal meridian, containing 35 acres and 67 hundre'ths of an acre, and which was entered with cash by one Richard Edwards, as I am informed and believe, and that he, said Richard Edwards, paid therefor 44 dollars and 58 cents, for which he received duplicate receipt, number .

I further say that I have known the said land for the last years; that I have lately surveyed the same with the aid of the county surveyor of Adams County, Iowa, and competent chairman under oath, and know all the corners of said land, and that the greater part of said tract of land was, on the 28th day of September, 1850, and
389 still is, swampy, and subject to such regular periodical overflows, both at the planting, growing, and harvesting season, as would materially injure and destroy a crop, and as such rightfully inured to the State of Iowa, under the provisions of an act of Congress, approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swampy lands within their limits."

I further depose and say

(Signed) W. KRISINGER.

I certify that W. Krissinger signed the above affidavit in my presence, and was duly sworn to the same before me *me* this day.

Witness my hand an' notarial seal this 25 day of July, A. D. 1861.

[SEAL] (Signed) FRANK M. DAVIS,
Notary Public.

390 We, the undersigned, being personally acquainted with Elijah Walter and W. Krissinger, by whom the foregoing affidavits were made, do certify that they are respectable men, and men of truth and veracity, and fully entitled to credit in all courts and tribunals.

Given under our hands and seals of office this 29th July, 1861.

[SEAL.] (Signed) B. J. WATERS,
Probate Judge Adams Co., Iowa.
H. G. ANKENEY,
Clerk Dist. Court,
By A. R. CRAWFORD,
Deputy.

LAND OFFICE DES MOINES, IOWA,
August 26, 1861.

From an examination of the foregoing, we are of opinion that the tract in question, to wit, southwest ¼ of northwest ¼ of section 18, in township 72 N., of range 32 west, of 5th P. M. was, on the 28th day of September, A. D. 1850, swamp and overflowed land within the true intent and meaning of the act of Congress adopted at that date, and we hereby certify that the said land was entered by said Richard
391 Edwards on the 18th day of March, A. D. 1854, per certificate No. 1664, for which he paid forty-four $\frac{58}{100}$ dollars.

(Signed) S. GOODRELL, *Register.*
JOHN G. WEEKS, *Receiver.*

STATE OF IOWA,
Polk County, ss:

S. F. Cooper, agent for the State of Iowa, being duly sworn, deposes and says, that having made diligent search and inquiry on the spot and

elsewhere for Richard Edwards, who entered the tract described in the affidavit of E. Walter hereto attached, he could not be found, and further that he has been informed and verily believes that said Edwards is a non-resident, and that for these reasons the affidavit of E. Walter, who resides near the land, is the best that could be procured.

(Signed) S. F. COOPER.

Subscribed and sworn to before me this twenty-fifth day of October, 1861.

(Signed) S. GOODRELL, *Register.*

392 STATE OF IOWA,
Executive Department:

I, Samuel J. Kirkwood, governor of said State, do hereby certify that Frank M. Davis, whose genuine signature appears on the foregoing instrument, was at the time of signing the same, to wit, on the 25th day of July, A. D. 1861, a notary public within and for the county of Adams, and State of Iowa, duly commissioned and acting; that his said attestation is in due form of law, and that full faith and credit are due all his official acts as such.

In testimony whereof I have hereunto set my hand and caused to be affixed the seal of the State of Iowa, at Des Moines, this 30th day of August, A. D. 1861.

By the governor, Samuel J. Kirkwood.

(Signed) ELIJAH SELLS,
Secretary of State.

393 (Indorsed:) R. & R. 1661. Affidavit of E. Walter. W. Krissinger. Swamp land S. W.^{4} N. W.^{4} section 18, tp. 72 north, range 23 west 5 p. m. Adams Co., Iowa. Entered tract No. 7. Cash, $44\frac{58}{100}$.

394 H.

LAND OFFICE, DES MOINES, IOWA,
Oct. 26th, 1861.

SIR: I herewith transmit 34 swamp-land affidavits and certificates on lands in townships 72, R. 32 & 33 & 73, R. 32 & 33, which were filed in this office by S. F. Cooper as agent of the State of Iowa, for the purpose of obtaining indemnity for the lands sold by the government.

Very respectfully,

(Signed) S. GOODRELL,
Register.

Hon. J. M. EDMUNDS,
Com'r Gen. Land Office, Washington City.

395 I.

GENERAL LAND OFFICE,
Nov. 1st, 1861.

Register, Des Moines, Iowa:

SIR: I am in receipt of your letter of 26th ulto., with proof to obtain indemnity on alleged swamp-lands in Adams Co., Iowa.

Very respectfully, your ob't s'v't,

J. M. EDMUNDS,
Commissioner.

(Endorsed:) Adams County vs. American Emigrant Comp'y. U. S. circ't court. Package No. 11. I. Certified copies. 1. Swamp-land list as approved by surveyor-guard & reported. 2. Oath of selector. 3. Letter of secretary of state. 4. Surveyor-general's letter of transmission. 5. List of land on which cash indemnity has been paid. 6th. List
396 of land on which land indemnity has been paid. 7. Copy of affidavit for indemnity. 8. Copy of letter of register of land office. 9. Copy of letter of C. G. L. Office acknowledging receipt of proofs. Filed Mar. 22, 1872. George B. Corkhill, clerk.

397 STATE OF IOWA,
Polk County:

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY.

Frank M. Davis, duly sworn, on oath says that on the 14th day of February, A. D. 1866, at the city of Des Moines, Iowa, at the principal office of the American Emigrant Company for the State of Iowa, affiant did present a certified copy of the resolution of the board of supervisors of Adams County, Iowa, passed on the 5th day of September, 1865, allowing and determining that affiant was entitled to forty per cent. upon the amount of indemnity, cash, & scrip paid by the United States to the State of Iowa on swamp-land indemnity proofs furnished by said Davis and subscribed before Frank M. Davis, notary public, and caused to be filed by him with the Commissioner of the General Land Office to F. C. D. McKay, agent of the American Emigrant Company, and demanded and requested of said company a com-
398 pliance of said company with the said resolution, and requested a settlement with said company, and demanded payment of forty per cent. of money and indemnity scrip then held or previously received by said company; that the said agent refused to comply with the resolution of the board of supervisors, and refused to pay to affiant and refused to pay to the county any part of such indemnity scrip or cash, or in any manner comply with the resolution, and absolutely denied the right of the county and affiant to any such claim, and rejected the demand & request in any and every point.

Subscribed and sworn to by Frank M. Davis before me this 20th M'ch, 1872.

[SEAL.] (S'g'd) D. W. FELSHAW,
Not. Pub.

I hereby agree that the above and foregoing affidavit may be read in evidence with the same effect as though taken by deposition upon notice duly served.

March 20, 1872.
(S'g'd) C. C. NOURSE,
For Def't.

399 (Endorsed:) Adams County vs. American Emigrant Company. U. S. circuit court. Equity, 168. Deposition of F. M. Davis. Package No. 12. Filed Mar. 22nd, 1872. George B. Corkhill, clerk.

400 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April 19th, 1872.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the annexed paper marked "A," containing two pages, is a true and literal copy of the official record of a letter from J. M. Edmunds, Commissioner of the General Land Office, to the governor of Iowa, dated February 2, 1864, and that the annexed paper marked "B," containing five pages, is a true and literal copy of the official record of a letter from J. M. Edmunds, Commissioner of the General Land Office, to Hon. John P. Usher, Secretary of the Interior, dated February 23, 1864; and that the annexed paper marked "C," containing three pages, is a true and literal copy of the official record of a letter from J. M. Edmunds, Commissioner of the General Land Office, to Frank M. Davis, of Quincy, Adams County, Iowa, dated April 15, 1862.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington the
401 day and year above written.

WILLIS DRUMMOND,
Commissioner.

Amount of fees required by law, $3.70.

A.

GENERAL LAND OFFICE,
February 2nd, 1864.

His excellency the GOVERNOR OF IOWA,
Des Moines, Iowa:

SIR: I have the honor to enclose herewith two affidavits forwarded to this office by J. C. Savery, esq., as agent of the American Emigrant Company, to obtain indemnity under act of 2nd March, 1855, for alleged swamp lands, the same being but samples of a large mass of similar testimony as to lands in Green and various other counties, forwarded by the agents of said company.

As bearing upon the validity of said testimony and showing the manner in which it was obtained, I enclose copies of three affidavits made respectively on the 9th, 12th, and 15th of December last by
402 John Tyler, John Cooney, and Mason Lynn, whose names appear on the proof referred to. It will be observed that they signed the proof in blank; that they never made answer to the interrogatories therein, nor did they authorize any one to attach answers for them, nor did they make oath to the contents thereof, thus making it clear, not only that the proof was filled up after signatures and in the absence of the signers, but that they were never sworn to, notwithstanding M'r Thomas, as notary, certifies under seal that they were. They appear not to have known even that he was a notary.

M'r Thomas appears in proof before this office as notary for various counties. Will you please inform me whether, by the laws of Iowa, a person can act as notary for a county of which he is a non-resident?

Be pleased to return to me the two printed affidavits herewith, that they may be filed with the case to which they belong.

Very respectfully, your ob't s'v't,
(S'g'd) J. M. EDMUNDS,
Commissioner.

403 GENERAL LAND OFFICE,
February 23rd, 1864.

Hon. JOHN P. USHER,
Secretary of the Interior:

SIR: I have the honor herewith to lay before you the large mass of affidavits, numbered in packages, respectively, 126, 128, 130, 131, 132, 135, 136, 137, 138, 139, 140, 141, 142, 143, 145, 146, 147, 148, 149, 150, 151, sent hither by the American Emigrant Company to show that the lands therein described are swamp lands within the terms of the swamp grant of 28th September, 1850, selected in 14 different counties, viz, Wright, Cass, Warren, Shelby, Wayne, Green, Clark, Ringgold, Crawford, Carroll, Taylor, Calhoun, Franklin, and Winnebago, and covering in the aggregate, by estimation, 300,000 acres.

These lands were long since disposed of by the United States as fast and arable lands, and the object of filing this proof by said company as vendees of the counties is to obtain from the United States the amount in cash for so much of these lands as were sold for cash,
404 and other lands in new locations in lieu of such portion as has been disposed of by U. S. bounty-land locations, the application being under the indemnity provisions of the acts of 2nd March, 1855, and 3d March, 1857.

1. After the lapse of some 13 years from the date of the original swamp grant of 1850, and some 8 years since the first indemnity act, 1855, and long after said lands had been disposed of by the government, we have descriptive data of these lands on ex-parte statements produced to establish their swampy character and obtain an equivalent in money and other lands from the government. All the tracts embraced by this proof are entered in the lists herewith and delineated on the accompanying diagrams, exhibiting the particular tracts claimed in each township, and the several counties are colored on the enclosed map.

The premises, it will be seen, are mainly in the longitudinal center of the State, distant on the west side from the Missouri River, the nearest 20 and some 130 miles, and on the other or east side the nearest 100 miles from the Mississippi, the periodical inundations of which led to the passage of the swamp grant of 1850.

405 2. On bringing these lands to the test of the official field notes and other data in this office, it is found that their alleged swampy character is not only not sustained, but absolutely contradicted by this official evidence of sworn officers having no interest whatever in the matter, and here standing unquestioned witnesses against the application as wholly destitute of merit, not even a meandered stream, with the exception as to a single township, running through any of these lands.

But in order to obtain whatever information was available by actual observation bearing upon these claims, a special agent, Mr. W. W. Curtis, was, by your approval, despatched to the region in question. He made a thorough examination of lands in Green County, which are claimed as swamp. His report herewith shows that the claim now set up, in so far as that county is concerned, is wholly destitute of merit, that the lands there claimed as swamp are not swamp within the meaning of the grant; a portion of the proof was signed in blank, the
406 witnesses never made answer to the interrogatories, nor did they even authorize any one to insert answers for them, nor did they make oath to the contents thereof, thus showing that it was filled up after signature and in the absence of the signer, and was not sworn to by them, notwithstanding a notary certifies under seal that it was. The

witnesses testify that they did not even know that the agent was a notary. All this, it will be seen, is now asserted by them under oath.

The fact is the record evidence furnished by the field notes, &c., shows the region in question to be mostly high and rolling paririe, the small streams, rivulets, and rivers not furnishing more than the requisite supply of water for the use of farms. This office holds the proof now submitted by the parties claiming the indemnity to be utterly unreliable, tainted with fraud, and accordingly rejects the claim for indemnity founded thereon. But the whole question is respectfully submitted
407 for the revision and ultimate determination of the Secretary of the Interior.

I respectfully refer in this connection to the enclosed copy of our letter of 9th November last, to M'r Curtis, and to the principles enunciated in our report of 14th December last to the Secretary, in the appeal case of S. P. Lyman.

In connection with this matter, and in order to protect the government against such wholesale and unjust demands upon the public Treasury, I take occasion to renew the recommendation in my last annual report, that precedent to the allowance of any such claims for indemnity under the said act of 1855, the States shall be required to prove the swampy character of the tracts with the same formality and precision as is now required in cases of ordinary pre-emption.

The vast demands still likely to be made upon the Treasury, and the reckless manner in which those interested are disposed to make their proof, seem urgently to demand this action at our hands.

Very respectfully, your ob't s'v't,

(S'g'd) J. M. EDMUNDS,
Commissioner.

408 C.

GENERAL LAND OFFICE,
April 15th, 1862.

FRANK M. DAVIS,
Quincy, Adams County, Iowa:

SIR: I am in receipt of your letter of the 3rd inst., referring to the proof heretofore forwarded to this office for indemnity under act of 2nd March, 1855, for swamp lands in Adams County, Iowa, and accompanying also a list of lands in the odd-numbered sections within the limits of the grant for railroad purposes by the act of 15th May, 1856, passing through said county. The indemnity proof appears to be made in accordance with the requirements of this office, and the account for cash and the issue of the special certificate will be stated and adjusted as soon as they shall be reached in the regular order of business, and the State found to be entitled thereto.

Respecting the lands described in the list enclosed by you, I have to state in adjudicating the conflicting interests arising under the
409 swamp and railroad laws, we are limited by the instructions of the Hon. Secretary of the Interior, to the field-notes of the surveys, and therefore precluded from the consideration of other testimony in acting upon the cases. Pursuing this system, and in accordance therewith, that portion of the lands described by you, situated in the Council Bluffs district, have been considered in connection with the field-notes of the surveys and plats, and all the tracts, with the exception of he N. E. ¼ of N. E. ¼, sect. 3, T. 71, R. 34 W., and N. E. ¼ of N. W. ¼, and

S. W. ¼ of N. W. ¼, sect. 13, T. 73, R. 34 W., have been adjudged as passing to the State under the railroad law. The claim as swamp land was rejected on the 25th Oct. last, and since then they have been certified to the State under said act of 15th May, 1856.

The exceptions mentioned were found to be swamp within the meaning of the swamp law, and will be ultimately approved and patented as such. The tracts in the late Chariton district, embracing those described by you in ranges 32 and 33 west, yet remain suspended, the examination required by the Secretary's letter, above referred to, not
410 having been made. These several cases will be taken up at an early day and disposed of upon the same principles. As we are confined in the examinations to the records of this office, the testimony proffered by you cannot be regarded.

Very respectfully your ob't serv't,
(S'g'd) J. M. EDMUNDS,
Commissioner.

(Endorsed:) Adams County vs. American Emigrant Company. L. 1. Letter of commission to gov. of Iowa. 2. Letter of same to J. P. Usher. 3rd. Letter of same to F. M. Davis. Package No. 13. Filed May 7th, 1872. George B. Corkhill, clerk.

411 STATE OF IOWA,
Executive Department:

DES MOINES, *Sept. 2d*, 1872.

I do hereby certify that the four papers hereto attached, marked respectively "A," "B," "C," and "D," are true and complete copies of four receipts or vouchers, filed in the executive office of the State of Iowa, for and on account of Adams County swamp-land indemnity money, as fully and correctly as they now appear on file in my office.

In testimony whereof, witness my hand the seal of the State, the date first above written.

{ THE GREAT SEAL OF THE STATE OF IOWA. } C. C. CARPENTER,
Governor of Iowa.

A.

Office of the American Emigrant Co., western agency, F. C. D. McKay, gen'l agent.

DES MOINES, IOWA, *June 9th*, 1865.

Received of Governor W. M. Stone, his indorsement on two drafts, one issued by the Treasurer of United States to pay the cash swamp-land claims of Audubon County, Iowa, for $3,623.49-100, the other issued by the same officer to pay the cash swamp-land claims of Adams County, Iowa, for $4,303.45-100.

(Signed) J. C. SAVERY,
Special Ag't for said Counties,
By F. C. D. McKAY.

412 B.

American Emigrant Company, Iowa agency, branch office.

DES MOINES, IOWA, *June* 10, 1865.

Memoranda of drafts drawn by the Interior Department to pay divers counties in Iowa their swamp-land indemnity claims on the United States.

County.	No. of d'ft's.	Am't.	When p'd.	Date of d'f.	Drawn on.
Monona	7350	$8,078 04	'65, Feb. 2	'65, Jan. 25	As't Tres., N. Y.
Montgomery	2925	9,630 51	'65, Feb. 25	'65, Feb. 15	1st Nat. B'k.
Page	2972	4,292 39	'65, Mar. 20	'65, Feb. 23	1st Nat. B'k.

I, James C. Savery, special agent for the State of Iowa, to collect and procure the adjustment of the claims of the counties above named in the United States for their respective swamp-land indemnity, duly appointed according to the 13th section of the act of 1862, hereby acknowledge that I have received of Hon. W. M. Stone, governor of the State of Iowa, the due endorsement of the several drafts above named, and the delivery by him of said drafts to me from said counties. I also confirm the receipt heretofore given in my name by F. C. D. McKay, for two other like drafts, for Audubon and Adams Counties.

(Duplicate.)

(Signed) J. C. SAVERY,
Special Ag't, &c.

C.

DES MOINES, *November 10th*, 1866.

STATE OF IOWA,
Executive Department:

Received this day the endorsement of Gov. W. M. Stone, on swamp-land indemnity draft No. 1250, calling for $794 58-100 (seven hundred ninety-four 58-100 dollars), in favor of Adams County, special agent, Adams County.

(Signed) J. C. SAVERY,
Special Ag't for Adams Co.

413 D.

DES MOINES, *April 8th*, 1867.

STATE OF IOWA,
Executive Department:

Received of Gov. W. M. Stone his indorsement, of his name on U. S. Treasury draft No. 1721, dated 5th, 1867, calling for nine hundred and seventy-seven dollars and sixty-three cents swamp-land funds in favor of Adams County.

(Signed) JAMES C. SAVERY,
Special Ag't for Adams County.

(Endorsed:) M. Package 14. Adams County vs. American Emigrant Co. Equity, No. 168. Plaintiff's evidence. 4 receipts for money. Governor's certificate. (Also) Filed Sep. 6, 1872. George B. Corkhill, clerk.

414 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Sept. 16th, 1872.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the annexed paper is a true and correct copy of the record of the letter from the Commissioner of the General Land Office to Frank M. Davis, Quincy, Iowa, dated Sept. 11th, 1866, relative to swamp-land indemnity for Adams County, Iowa.

In testimony whereof I have hereunto subscribed my name & caused the seal of this office to be affixed, at the city of Washington, on the day & year above written.

[SEAL.] WILLIS DRUMMOND,
Commissioner.

415 (Copy.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Sept. 11th, 1866.

FRANK M. DAVIS, *Quincy, Iowa:*

SIR: Referring to your letter of the 18th July last, respecting the swamp-land indemnity for Adams Co., and asking why certain proof for lands in Chariton district was rejected when the proof relating to the same character of lands in Council Bluffs district was admitted and adjusted. I have to state in reply that it appears upon examination that the tracts in the Chariton district were inadvertently rejected because the Chariton list of swamp selections reported by the surveyor-general did not embrace these tracts. It appears, however, that the greater number of them were duly reported as swamp lands in the Council Bluffs list; indemnity has, however, been allowed on the following tracts upon proof subsequently filed by the American Emigrant Co., as follows:

416

	Sec.	N. T.	W. R.
S. W. ¼ of N. W. ¼	18	72	32
S. W. ¼ of N. E. ¼	18	"	"
N. E. of S. W. ¼	33	"	"
W. ½ of S. E. ¼	33	73	32
S. W. ¼ of S. E. ¼	23	72	33
S. E. ¼ of S. E. ¼	23	"	"
W. ½ of N. W. ¼	24	"	"

	Sec.	N. T.	W. R.
N. W. ¼ of N. E. ¼	26	72	33
N. E. ¼ of N. W. ¼	26	"	"
S. E. ½ of N. W. ¼	26	"	"
N. W. ¼ of N. E. ¼	28	"	"
N. E. ¼ of N. E. ¼	28	"	"
N. W. ¼ of N. W. ¼	28	"	"
N. E. ¼ of S. E. ¼	6	73	33
S. E. ¼ of N. E. ¼	6	"	"
S. E. ¼ of S. E. ¼	6	"	"

It also appears that the following tracts have not been reported as swamp land, and consequently cannot be considered subject to indemnity, to wit:

417		N.	W.
N. W. ¼ of N. E. ¼	4	72	32
S. E. ¼ of S. W. ¼	33	73	32
N. W. ¼ of N. E. ¼	7	73	33
N. E. ¼ of N. W. ¼	4	72	32

The remaining tracts will be immediately put in hand for an early adjustment.

Very respectfully, your ob't serv't,
(S'g'd) JA'S S. WILSON,
Commissioner.

(Endorsed:) O. Adams County vs. American Emigrant Company. Rebutting evidence of dep't. No. 168. Package No. 15. 1 certified copy of letter, Sept. 15th, 1866. Filed Oct. 1st, 1872. George B. Corkhill, clerk.

418 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Sept. 17*th*, 1872.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the records of this office of a letter to the register & receiver at Kanesville, Iowa.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] (S'g'd) WILLIS DRUMMOND,
Commissioner of General Land Office.

419 GENERAL LAND OFFICE,
March 21, 1855.

REGISTER & RECEIVER, *Kanesville, Iowa:*

GENTLEMEN: Congress, by act of 3rd inst., having erected an additional land district in Iowa, to be called Sioux River district, embracing all that part of the old Missouri district lying north of the line dividing townships 85 & 86 north, you are requested to suspend all sales within above limits and immediately prepare to turn over to the land-officers for said district all the tract, books, maps, plats, applications, pre-emption proofs, and documents of every description appertaining to lands within the new district so soon as the officers shall be prepared to receive them after the execution of their official bonds, of which they will advise you.

You will also take duplicate receipts, particularly sepecifying the books, &c., turned over, one of which you will transfer to this office.

The same act also detaches townships 67, 68, 69, 70, 71, 72, 73, 74, & 75 of ranges 32 and 33 from your district and attaches them to
420 the Chariton district, and the course above directed will be pursued in relation to the books, &c., connected with lands in those

townships, suspending entries, &c., and you will correspond with the officers at Chariton in relation to the transfer of the books & papers connected with land in said townships. Such boxes as may be necessary to preserve these records and papers for transportation you will procure, and the receiver, as disbursing agent (will) defray the expenses referring on his vouchers to the date of this letter.

The accompanying diagram exhibits the boundaries of the districts under the new arrangement.

Very respectfully, your ob't serv't,

JOHN WILSON,
Commissioner.

421 (Endorsed:) P. Adams County vs. American Emigrant Company. U. S. circuit court, No. 168. Plaintiff's rebutting evidence. 1 certified order . Ranges 32 & 33 to Chariton dist. Package No. 16. Filed Oct. 1st, 1872. George B. Corkhill, clerk.

422 I, Ed. Wright, secretary of state of the State of Iowa, hereby certify that I have examined the extract from executive record hereunto attached, and marked "A," and find the same to be a true copy of the record entry in the matter of the appointment of J. C. Savery as swamp-land agent for Montgomery and other counties, and I further certify that the copy of the bond of J. C. Savery, hereunto attached, and marked "B," is a true and correct copy of the original now on file in this office.

In testimony whereof I have hereunto attached my name and affixed the great seal of the State of Iowa.

Done at Des Moines this 5 day of December, A. D. 1871.

[SEAL.] (S'g'd) ED. WRIGHT,
Secretary of State.

423 1.—*Extract from Record 2 A. Jan. 25, '63.*

Appointed and commissioned J. C. Savery, of Polk County, Iowa, special swamp-land agent, under section 13 of chapter 160 of the acts of the ninth general assembly of the State of Iowa, to settle the swamp-land matters with general government for the several counties of (having been recommended by the board of supervisors thereof) Page, Taylor, Adams, Montgomery, Shelby, Monona, and Carroll.

424 B.

Know all men by these presents that we, J. C. Savery, as principal, and F. M. Palmer and B. F. Allen, as sureties, acknowledge ourselves indebted to the State of Iowa in the penal sum of ten thousand ($10,000) dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators, upon the following conditions, to wit:

Whereas the above-named J. C. Savery has been appointed special swamp-land agent, under sec. 13 of chapter 160 of the acts of the 9th gen. assembly of the State of Iowa, to settle the swamp-land matters with the general government for the several counties of Page, Carroll, Taylor, Adams, Montgomery, Shelby, Monona, & Audubon, in the State of Iowa:

Now, if the said J. C. Savery shall faithfully perform the duties of said agency, as required by said act of the general assembly, and shall observe all instructions of the proper authority as required by said act,

and shall render a true account of his agency for each of said counties and of the doings therein, to the proper authority when required
425 thereby, or by law, and shall promptly pay over to the person or officers entitled thereto all money which may come into his hands by virtue of his said agency, and shall faithfully account for all balances of money remaining in his hands at the termination of his agency, and shall hereafter exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, and securities, or other property, appertaining to his said agency, and deliver them to his successor, or to any person authorized to receive the same, and if he shall faithfully and impartially, without fear, favor, fraud, or oppression, discharge all other duties now or hereafter required of his said agency by law, then this bond to be void; otherwise in full force.

Witness our hands this 24th day of June, 1863.

(S'g'd) J. C. SAVERY.
F. W. PALMER.
B. F. ALLEN.

426 STATE OF IOWA,
Polk County, ss:

I, J. C. Savery, solemnly swear that I will support the Constitution of the United States and that of the State of Iowa, and that I will faithfully and impartially discharge the duties of an agent of the State of Iowa, under the provisions of chapter 160 of the laws of the 9th general assembly of the State of Iowa, and will fulfill the conditions of the above bond according to the best of my ability.

Subscribed and sworn to before me this 24th day of June, A. D. 1863.

[SEAL.] S. A. AYRES,
Notary Public.

(Endorsed:) Adams County vs. American Emigrant Company. Bond & appointment of J. C. Savery. Package No. 17. Rebutting evidence. U. S. circuit court. Filed Oct. 11th, 1872. George B. Corkhill, clerk.

427 Circuit court of the United States, district of Iowa.

Be it remembered that by virtue of and in accordance with the 67th rule of the Supreme Court of the United States, and the amendments thereof, and by virtue of the authority vested in me under the rules of said circuit court, I hereby name and appoint James Widner a commissioner to examine any and all witnesses that may come before him in the cause of Adams County, complainant, against the American Emigrant Company, defendant, now pending in said circuit court, such examination to be conducted in accordance with, and agreeable to, the directions of the dedimus potestatum hereto attached.

Witness my hand and the seal of said court, at my office, in Des Moines, this 29th day of September, A. D. 1871.

[SEAL.] (Signed) GEORGE B. CORKHILL, *Clerk.*

428 Dedimus protestatem.

Circuit court of the United States, district of Iowa, ss:

To James Widner, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority, to examine any and all witnesses who may come before

you, on their corporal oaths, as witness' in a cause depending in the circuit court of the United States for the district of Iowa, wherein Adams County is plaintiff and American Emigrant Company defendant, on the part of the , upon the interrogatories annexed to this commission. And therefore you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine them on oath upon the said interrogatories.

That such questions as you propound to the said witness you *the interrogatories and cross-interrogatories hereto annexed* shall cause the same to be written out and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witness , and the same to be subscribed by them and duly sworn to before you. That you take said deposition in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned. That you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa. That you endorse on the outside of said envelope thus directed the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 29 day of Sept., 1871, and in the 96 year of the Independence of the United States of America.

Attest:

[L. S.] GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

429 STATE OF IOWA,
Adams County:

I, James Widner, do solemnly swear that I will support the Constitution of the United States, and will faithfully and impartially discharge the duties of special examiner and commissioner as per the accompanying commission and directions, and according to law: So help me God.

JAMES WIDNER.

Subscribed in my presence, by James Widner, and sworn to by him before me this 10th day of October, 1871.

[SEAL.] J. P. CUMMINS,
Notary Public for Adams Co., Iowa.

430 In the circuit court of the United States for the district of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } Equity. No. 168.

To the American Emigrant Company, defendant, or to Withrow & Wright, solicitors for defendant:

You are hereby notified that the complainant, Adams County, will proceed to take the depositions of John Barnett, R. H. Schooling, O. B. Case, Samuel Larimer, A. C. Kriddlebaugh, G. D. Peterson, John W. Morris, Charles Bixler, J. P. Cummins, John Bixby, J. R. Holbrook, J. D. Hart, and numerous other witnesses to be produced before James Widner, a special examiner & commissioner of this court, duly appointed to take depositions in the above cause, who is also clerk of the district court of the State of Iowa in and for said county, at the office of said James Widner, in the town of Quincy, Adams County, Iowa, on Monday morning at nine o'clock a. m. of the 20th day of November,
431 A. D. 1871, and continue from day to day till all are taken.

When so taken to be read in evidence in the trial of the above-entitled cause, whensoever the same may be tried. You are notified to be present at the above-named time and place and cross-examine on part of defendant, if you desire to do so.

Quincy, Adams County, Iowa, Oct. 11, 1871.

ADAMS COUNTY.
By FRANK M. DAVIS,
Att'y.

It is hereby specially ordered, in pursuance of the authority vested in me as special examiner and commissioner, duly appointed as such of the circuit court of the United States in and for the district of Iowa, that the above and foregoing notice to take deposition be served upon defendants or their agent for the State of Iowa, as upon counsel for defendants, or upon both or either of them, as complainants may elect, by reading to them, or either of them, the said notice, and delivering or offering to deliver a copy of the same at least ten clear days before the day
432 fixed for taking said depositions.

(S'g'd) JAMES WIDNER,
Special Examiner & Commissioner in Chancery.

This notice came unto my hands this 14th day of October, A. D. 1871, and I served the same on the within-named Withrow & Wright by reading the same to Tho's S. Wright, a member of said firm, at Des Moines, Iowa, on the 14th day of October, A. D. 1871, and delivering to said Wright a true copy thereof at same time & place.

PETER MELENDY,
U. S. Marshall.
By A. BOWERS,
Dep'ty U. S. M.

Fees: Service, 2.00; copy, .50; mil., .10—$2.60.

In the circuit court of the United States for the circuit and district of Iowa.

ADAMS COUNTY, PLAINTIFF,
vs.
THE AMERICAN EMIGRANT COMPANY, DEFENDANT. }

I, James Widner, special examiner and commissioner in chancery, do

hereby certify that in pursuance of the foregoing commission and
433 in accordance therewith, and in accordance with the notice hereto attached, I caused *I caused* the following witnesses to come before me on the 20th day of November, A. D. 1871, at my office in Quincy, Adams County, Iowa, at nine o'clock a. m. of said day, and did then and there upon said day, and upon adjournment as hereinafter stated, take their depositions, to be used in the above-entitled cause, to wit: Samuel Larimer, J. R. Holbrook, O. B. Case, J. D. Hart, J. J. Ramany, A. J. Kriddlebaugh, G. D. Peterson, H. A. Smur, R. H. Schooling, John Barnett, Charles Bixler, H. G. Ankeny, J. W. Morris, John Bixby, Alfred White, Isaac Crow, J. F. Powell, all of whom, being first duly sworn to tell the whole truth, their depositions were reduced to writing by me and read over to them, was signed and sworn to by each respective witness at the time and place aforesaid, and their true depositions are herewith returned.

That Frank M. Davis appeared for the plaintiff in the examination of each witness, and that C. C. Nourse appeared as attorney for de-
434 fendant in the examination of each witness, except the three first named above, at whose examination no one appeared for defendant, to wit:

SAMUEL LARIMER, produced, sworn, and examined, deposes and says as follows:

Interrogatory 1. State your name, age, place of residence, and occupation.

Answer. My name is Samuel Larimer; age, 65 years; residence, Queen City Township, Adams Co., Iowa, and occupation, that of a farmer.

Int. 2nd. State where you resided in the year 1862, and state how long you have resided in Adams County.

Answer. Queen City, Adams Co., Iowa, and I have resided in Adams County over 17 years, and have lived in said county all the time.

Int. 3rd. State anything you may know about the people of Adams County voting upon the sale of the swamp lands to the American
435 Emigrant Company. State what representations were made concerning said sale; give dates, places, and full particulars.

Ans. There was an election held in Queen City Township, Adams County, Iowa, in the fall of 1862, at the general election, at which I was present. The subject of the sale of the swamp-land to the American Emigrant Company was voted on at that election by the people. I heard representations made before and at the election that the swamp-land, and money in lieu of land that has been entered, would be a total loss to the county, and that $2,000 would be better to the county than nothing; and that the action that the county had taken in the selections and proving up of said swamp-lands was illegal and worthless. It was also represented that the American Emigrant Company would put settlers on the land, and by so doing the taxable property of the county would be increased, and the county released from draining said land. These representations were made by John Bixby, clerk of the district
436 court, and clerk of the board of supervisors, and by H. A. Smur, one of the members of the board of supervisors. M'r H. A. Smur was quite active on the day of election in urging the people to vote for said sale.

Int. 4. State what the voters at that election said who voted for the sale of said swamp land.

Ans. They advocated that they believed the swamp land was a total

loss to the county, together with the money, and that $2,000 from the American Emigrant Company would be better than nothing.

Int. 5th. State about the number of votes that were cast in Queen City Township and about how many voted for the contract?

Ans. There were from 40 to 60 votes in the township, and I think a majority voted against the contract; am not certain.

Int. 6th. You may now state anything you may know regarding
437 a proclamation for the election and a copy of the contract being posted at the election or any other place in the township.

Ans. I neither saw nor heard of any proclamation or copy of contract posted at the place of election or any other place in the township. I think I should have seen it if there had been any posted.

Int. 7th. State what your opportunities were for knowing if any such proclamation or copy of contract had been posted.

Ans. I was looking for such papers and thought they should have been posted. I lived about twenty rods from the post-office—the most public place in the township—and was there every day, and am very sure there was no such papers posted up. I also lived about forty rods from the schoolhouse where the election was held, and was there at the election, and heard or saw nothing of such papers and heard no one speak of one being posted.

Int. 8th. State whether you are acquainted with the swamp
438 land in the eastern half of Adams County, and state also whether you are acquainted with the people who live in the eastern portion of Adams County. Describe the land settled on, drained, or improved by the American Emigrant Company and give particulars.

Ans. I am acquainted with a good portion of the swamp land in that part of the county, and with some of the people living in that part of the county. I don't know of any swamp land drained or improved nor settled upon in the eastern part of the county, except one 40-acre tract in section 23, T. 72, R. 33, and another 40-acre tract in the N. W. of the N. E. of section 30, same township & range. The last-described 40-acre tract was settled by William Cressingor, a man that lived in the county since 1852, and the railroad company built a depot on the other 40-acre tract.

Int. 9. How many acres of swamp land is there in the east half of Adams County?

439 Ans. I cannot tell certain. There is probably between one and two thousand acres.

Int. 10th. How much of said swamp land is improved or drained?

Ans. I don't know of any except the pieces named above. The rest is all unimproved, and not drained, to the best of my knowledge.

Int. 11th. State what you know about John Bixby being agent for the American Emigrant Company?

Ans. I heard him say he was agent for the American Emigrant Company.

(S'g'd) SAMUEL LARIMER.

Subscribed & sworn to before me by Samuel Larimer, in my presence, this 20th day of November, 1871.

(S'g'd) JAMES WIDNER,
Special Commissioner & Examiner in Chancery.

Claims: Mileage—6 miles & one day, $1.60.

I certify that the foregoi g is the true deposition of Samuel Larimer,

which was subscribed and sworn to by said witness before me and in my presence, at Quincy, Adams Co., Iowa, this 21st day of Nov., 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

440 JOSEPH R. HOLBROOK, produced, sworn, & examined, deposes as follows:

Int. 1st. State your name, age, place of residence, and occupation.

Ans. My name is Joseph R. Holbrook; my age, 39 years; and occupation, farmer; residence, Adams Co., Iowa.

Int. 2nd. How long have you resided in Quincy Township, Adams County, Iowa?

Ans. I have resided in Adams County, in Quincy Township, a little over 18 years.

Int. 3. State what you know about an election held in Adams County on a contract for the sale of swamp lands to the American Emigrant Company. Give dates and particulars.

Ans. I know there was an election held in the fall of 1862, at the general election, in Adams County, Iowa, at which election the question of selling the swamp lands to the American Emigrant Company was voted on. I was present at said election, and voted for the
441 sale of the lands to said American Emigrant Company.

Int. 4th. State what representations were made at said election and prior thereto in regard to the said contract and the sale of the lands. Give full particulars.

Ans. I was in Quincy at the time the contract was made. I saw McKay, and they told me he was buying the swamp lands of Adams County, and was going to give $2,000. I remarked that $2,000 seemed a very small sum for the swamp lands. They told me it was very uncertain about our getting the lands or not. At the day of election a good 'eal was said about it. People seemed to think we had better take the $2,000, as it was uncertain whether we would get anything if we did not take it. I heard Bixby urge the sale, and assign the above reasons for voting for the sale. The voters did not seem to think they were voting anything on the contract except the lands. They appeared to think that they would never get any money for the land that
442 had been entered before the swamp land was selected. The people received these impressions from McKay, the man who was trying to buy the swamp land, and gave him as their authority for these assertions. These statements were also made by John Bixby, clerk of the board of supervisors.

Int. 5. State if you know anything about seeing a copy of the contract at that election or proclamation of election being posted.

Ans. I never saw any proclamation or copy of contract or heard anything about anything of the kind being posted at the election and the entire election was conducted upon hearsay of what the contract contained.

Int. 6. State anything you know about John Bixby acting as agent of the American Emigrant Company.

Ans. All I know is from hearsay; I have heard that he was.

Int. 7. State the number of votes polled in the township of Quincy, at that election, for and against the contract.

443 Ans. There was forty-three votes for the contract and two votes against it.

Int. 8. State what representations were made by McKay about settling the swamp lands.

Ans. The representations were made that whatever land was obtained by the American Emigrant Company were to be settled and improved.

Int. 9th. State how long you was at the election the day the contract was voted on and why the people voted for the contract.

Ans. I was at the election nearly all day. The people, from their conversation, relied upon the statements of McKay and voted for the contract upon his representations.

Int. 10th. State how many settlers the American Emigrant Company have sent into Adams County, and how many lands they have drained & improved.

Ans. I have no knowledge of their ever sending any settlers or
444 draining any lands in Adams County, and I have not even ever heard of anything of the kind being done by them.

(Signed) J. R. HOLBROOK.

Subscribed and sworn to by J. R. Holbrook before me this 20th day of Nov., 1871.

JAMES WIDNER,
Special Commissioner & Examiner in Chancery.

Fees & mileage: 4 miles & 1 day, $1.40.

I certify that the foregoing is the true deposition of J. R. Holbrook, which was subscribed and sworn to by said witness before me and in my presence at Quincy, Adams County, Iowa, this 20th day of Nov., A. D. 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

O. B. CASE, being produced, sworn, and examined, deposes and says as follows:

Int. 1st. State your name, age, place of residence, and occupation.

Ans. My name is O. B. Case; my age, 34 years; and occupation, farmer; residence, Grant Township, which was formerly Union Tp, Adams County, Iowa.

445 Int. 2. How long have you resided in Adams County, Iowa?

Answer. I have lived in Adams County fifteen years.

Int. 3d. State what you know about an election held in Adams County on a contract for the sale of swamp lands to the American Emigrant Company. Give dates & particulars.

Ans. I know there was an election in the fall of 1862 at the time of the general election, at which time a vote was taken on the proposition for the sale of the swamp lands to the American Emigrant Company. I was at the election & don't know how I voted.

Int. 4th. State what representations were made at said election and prior thereto in regard to the said contract and the sale of the lands. Give full particulars.

Ans. The representations were that the 2,000 acres was all we would ever get at any rate, and as to the indemnity money, that was a
446 settled arrangement that we would never get anything. It was also understood that the American Emigrant Company was to settle the land with white settlers, one-third in three years, one-third in five years, and one-third in eight years, and that the necessary expenses of reclaiming & draining said land would about use all it would bring, and that the county would not realize more than $2,000

out of the land if they kept it and drained it themselves; these representations were made before & at the election.

Int. 5th. State anything you know about John Bixby acting as agent for the American Emigrant Company, and give your means of knowledge and particulars.

Ans. I was a member of the board of supervisors at the time the vote was taken and from that time up to the year 1871. John Bixby took a very active part in getting the people to ratify the contract with the American Emigrant Co. Afterwards, Bixby represented to the board of supervisors that he was the special agent of said emigrant
447 company; and I know of his selling lands for them; I know of two 40 acre lots that he sold for them.

Int. 6th. What township in Adams Co. did you live in in 1862, and what number of votes were polled for the contract in that township?

Ans. I lived in Union Township, and there were ten votes cast for said contract and none against it.

Int. 7th. State why the voters of that township voted for the contract.

Ans. They relied upon the representations as to the loss of the indemnity money and the value of the lands as above represented.

Int. 8th. State who made these representations as to settlement of lands and the indemnity money.

Ans. I have heard John Bixby make these representations, and I understood Bixby to make them upon the authority of McKay.

448 Int 9. State what you know about the emigrant co. putting settlers upon swamp land in Adams County.

Ans. I don't know that they have ever put any settlers on swamp lands in this county under the contract. I know of plenty of land covered by the contract that is neither settled on, drained, or improved.

Int. 10th. State what was the knowledge of the board of supervisors of Adams County in the year 1862 in regard to indemnity money and land claimed from the United States.

Ans. All the board of supervisors knew was that the county owned a claim against the United States for indemnity money and land or scrip on account of swamp land entered after the swamp land grant and prior to the selection of swamp land, and that proofs had been forwarded on in the form of affidavit, but the board did not know anything
449 about the condition of the claim as to whether it was valid or not, or whether the authorities at Washington would recognize it or not.

O. B. CASE.

Fees: 13 miles & 1 day, $2.30.

Subscribed and sworn to by C. B. Case before me and in my presence this 20th day of Nov., 1871.

JAMES WIDNER,
Commissioner & Special Examiner in Chancery.

And now the taking of depositions in this case is adjourned until 9 o'clock to-morrow morning.

I certify that the foregoing is the true deposition of O. B. Case, which was subscribed and sworn to said witness before me and in my presence this 20th day of Nov., A. D. 1871.

JAMES WIDNER,
Special Commissioner & Examiner.

Nov. 21st, 1871—9 o'clock a. m.

In pursuance of adjournment the taking of dep. resumed.

Whereupon J. D. Hart, being produced, sworn, and examined, deposes and says as follows:

450 Int. 1st. State your name, age, place of residence, and occupation.

Ans. My name is Jonas D. Hart; age, 45 years; residence, Nodaway Township, Adams Co., Iowa; occupation, farmer.

Int. 2nd. State how long you have resided in Nodaway T'p, Adams Co., Iowa.

Ans. I have lived in said township & county about 16 years.

Int. 3rd. State if you are acquainted with the American Emigrant Company, defendant to this suit.

Ans. I know them only by reputation.

Int. 4th. State what acquaintance you have with the land selected as swamp land in the southern part of Adams County; tell about the number of acres, and state particularly what improvements or settlements have been made of any of the swamp land by the American Emigrant Company.

Ans. I think I can calculate something near 800 acres in Nodaway Township. I don't know anything about the selections outside of
451 my township. The S. E. qr. of the N. E. q'r of sec. 10 is under fence, and occupied by M'r Parcher. The S. E. q'r of the same section is occupied by the M'r Romangs and M'r Michael Craft. The N. ½ of the N. E. q'r of sec. 17 is occupied by M'r Gregg. I don't know whether it is all under fence or not. He is living on it. Then there is the S. E. q'r of S. W. q'r of sec. 20 is occupied by M'r Luke Campbell. That is all that is occupied or improved in Nodaway Township, making about 320 acres occupied and about 500 not occupied, improved, or cultivated.

Int. 5th. State where the parties who reside on and occupy the land mentioned are from, and under what authority they hold the land.

Ans. M'r Parcher has lived in Adams County about 14 years. He came here from Madison County in this State. He bought the land of M'r John Bixby, agent of emigrant co., in the fall of 1865 or spring of 1866. The Romangs came here from Springfield, Illinois; also M'r Craft came from the same place, and bought of the M'r Romangs,
452 and the Romangs bought of John Bixby, as agent of the American Emigrant Co. Mr. Gregg came here, as near as I can calculate, two years ago last spring. He purchased, I think, of M'r David Burton. Burton, I think, bought of David Richey. I think Gregg came from Henry County, Iowa. I don't know where M'r Campbell came from.

Int. 6th. State how many tracts of swamp land have been settled on, drained, or improved by emigrants sent into Adams County by the American Emigrant Company.

Ans. I don't know of any, unless it was M'r Campbell. I don't know how he came here.

Cross-examination waived.

(Signed) J. D. HART.

Fees claimed: Mileage, 9 miles & 1 day, $1.90.

Subscribed & sworn to by J. D. Hart in my presence before me this 21st day of Nov., 1871.

JAMES WIDNER,
Special Commissioner and Examiner in Chancery.

453 I certify that the foregoing is the true dep. of J. D. Hart, which was subscribed and sworn to by said witness before me and in my presence at Quincy, Adams Co., Iowa, this 21st day of Nov., 1871.

JAMES WIDNER,
Special Commissioner & Examiner.

JOHN J. ROMANG, produced, sworn, & examined, deposes and says as follows:

Int. 1st. State your name, age, residence, and occupation.

Ans. My name is John J. Romang; age, 33 years; residence, Nodaway Township, Adams Co., Iowa; occupation, farmer.

Int. 2nd. State what knowledge you have of the American Emigrant Company.

Ans. I had not any knowledge of the American Emigrant Company until I came to this county; was here three months seeking a home before I bought the land. I bought the S. E. q'r of section 10, T. 71, R. 35, of John Bixby, agent of the American Emigrant Company, the 16th day of February, 1865.

454 Int. 3rd. State whether or not you were sent to Adams County by the American Emigrant Company, or occupy the land by their request, or under their direction in any manner.

Ans. I was not sent here by the American Emigrant Co., and did not buy the land at their request.

Cross-examination waived.

(Signed) JOHN JACOB ROMANG.

Fees claimed: 9 miles & 1 day, $1.90.

Subscribed and sworn to by John Jacob Romang, before me and in my presence, this 21st day of Nov., 1871.

JAMES WIDNER,
Special Commissioner & Examiner in Chancery.

I certify that the foregoing is the true deposition of John J. Romang, which was subscribed and sworn to by said witness before me and in my presence, at Quincy, Adams Co., Iowa, this 21st day of Nov., 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

455 A. J. KRIDLEBAUGH, produced, sworn, and examined, deposes as follows:

Int. 1st. State your name, age, residence, and occupation.

Ans. My name is A. J. Kridlebaugh; age, 46 years; and residence Queen City Township, Adams County, Iowa, and occupation potter.

Int. 2nd. State how long you have resided in Adams County, and what acquaintance you have with the American Emigrant Company.

Ans. I have lived in Adams County about 13 years. It is 15 years since I came to this county, and I have lived two years of the time in Page County, Iowa. I am personally acquainted with one of their agents, John Bixby. I don't know anything about the company itself.

Int. 3rd. State if you are acquainted with the swamp-land selec-
456 tions in the eastern half of Adams County. State also what improvements have been put upon them by the American Emigrant Company, and describe the land.

Ans. I am acquainted with a majority of the swamp lands in the east half of the county. I don't know of any improvements made by the Emigrant Company. I know of two pieces that are improved; both, I

think, is in section 30, T. 72, R. 33. There are some ten or twelve forty-acre tracts that I know of that are not improved or drained.

Int. 4th. State whether or not the improvements put upon the two 40 acres you have mentioned were made by the American Emigrant Company or not; and state what your knowledge is as to the improvements.

Ans. The improvements were not made by the American Emigrant Company. M'r Cressinger made the improvement on one 40-acre tract before the American Emigrant Company contracted for the land, and M'r James bought his land of the county, and made improvements
457 himself, since the contract with said Emigrant Company. These are the only two 40-acre tracts that I know of in the eastern part of the county that are improved, with the exception of the one at Prescott, and the B. & M. R. R. Company built a depot on that one at Prescott.

Cross-examination waived.

(Signed) A. J. KRIDLEBAUGH.

Fees claimed: 2 days & 6 miles, $2.60.

Subscribed & sworn to by A. J. Kridlebaugh, before me and in my presence, this 21st day of Nov., 1871.

JAMES WIDNER,
Special Commissioner & Examiner in Chancery.

I hereby certify that the foregoing is the true deposition of A. J. Kridlebaugh, which was subscribed & sworn to by said witness before me and in my presence, at Quincy, Adams Co., Iowa, this 21st day of Nov., A. D. 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

G. D. PETERSON, being produced, sworn & examined, deposes as follows:

Int. 1st. State your name, age, residence, & occupation.

458 Ans. My name is George D. Peterson; age, 42 years; residence, Washington Township, Adams County, Iowa; occupation, farmer.

Int. 2nd. State how long you have resided in Adams County.

Ans. I have lived in Adams County 17 years.

Int. 3td. State whether you are acquainted with the swamp-lands in the northern part of Adams County, and state in particular the swamp-lands in that part of the county that are improved, who improved them, and under whom they claim title.

Ans. I am acquainted with a good 'eal of the swamp-lands in Car'l & Washington townships. There is a piece held by M'r Perry that M'r Prickett improved. It is the S. E. of the S. W. of sec. 14, T. 73, R. 34. There is also another piece, that I can't give the numbers of; there is about five acres broke on it. The piece that Perry owns, above spoken of, is, I believe, all under fence. It has been all improved 14
459 years. I think Prickett got his title from the county. If I am not mistaken, there is about 2,000 or 2,100 acres in the two townships above mentioned. The two pieces above mentioned are all the improvements on swamp-lands that I know of in Car'l & Washington township.

Cross-examined:

Int. 1st. How long have you been acquainted with the swamp-lands

in the two townships named, and how long have you known the fact that there were about two thousand acres of it in those two townships?

Ans. I have been acquainted with the land ever since I have lived there. I think I have known them as swamp-lands some three or four years.

Int. 4th. State if all the lands you refer to as swamp-lands had been selected as such prior to the contract with the county for their sale to the Emigrant Company?

Ans. If I understand that question, I will say the' had.

460 Int. 5th. State if the fact that there were about 2,000 or 2,100 acres of swamp land in those two townships was notorious and publicly known by the citizens at the time of the election upon the ratification of the contract.

(Objected to by pl'ff as not proper cross-examination.)

Ans. I think it was.

Re-examined:

Int. 1st. State whether or not, at the time of the election, it was notorious or not that the emigrant company was to put settlers upon and improve the land, and state particularly what improvements they were to put upon the land.

(Objected to by defendant's counsel, as irrelevant, incompetent and immaterial; that the written contract is the best evidence of what the emigrant company agreed to do, and that they are not responsible for any one's falsehoods.)

Ans. The understanding that I had of it, they were to settle
461 & break the land, and put out five acres of timber on each 40 acres, and they were to drain the land where it needed draining.

G. D. PETERSON.

Subscribed and affirmed to, by George D. Peterson, before me and in my presence this 21st day of Nov., 1871.

JAMES WIDNER,

Special Commissioner & Examiner in Chancery.

Fees claimed: 12 miles & 1 day, $2.20.

I certif' that the foregoing is the true deposition of G. D. Peterson, which was subscribed and sworn to by said witness before me and in my presence, at Quincy, Adams County, Iowa, this 21st day of Nov., 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

H. A. SMURR, produced, sworn & examined, deposes and says as follows:

Int. 1st. State your name, age, residence, & occupation.

Ans. My name is H. A. Smurr; my age, 68 years; residence, Queen City Township, Adams County, Iowa; occupation, harness-maker by trade.

462 Int. 2nd. State how long you have resided in Adams County, and what office did you hold in the county in the year 1862, and subsequent thereto.

Ans. I have lived in Adams County 15 years next May. I was one of the board of supervisors for the years, I think, 1862, 1863, 1864 & '65.

Int. 3rd. State if you were present on the board of supervisors on the 3rd day of Sept., 1862, at the time the proposition to sell swamp lands

to the American Emigrant Company. State what representations were made as to the subject-matter of the contract, and give all the particulars in relation to the said contract.

(Objected to by def't's counsel, so far as it may call for evidence tending to vary the terms of the written agreement.)

Ans. I was present at that date, was one of the members of the board. M'r McKay came forward and made a speech in ref*f*erence to the operation of the American Emigrant Company in other counties and
463 States. He represented that they had made several settlements in different part of this and other States. He then advanced the grounds or proposition which he would make with the board of supervisors of Adams County for the swamp lands belonging to said county. He proposed to give one dollar an acre for the swamp land that the county held, and to send in a certain number of settlers and locate them on said lands. He then set forth the amount of improvements to be made on said lands which was to be put under cultivation, five acres of timber to be cultivated on each 40 acres, and five acres of orchard on each 40 acres, and to drain the land, or if they did not drain the said land the county had a right to drain and the emigrant company to pay the expenses of draining, likewise the board to have control or regulate the sale of lands so far as directors were necessary for the interest of the county.

There were representations made in regard to the advantages
464 the county would derive from said sale. I remember that he spoke in reference to the back money, and conveyed the idea that it was never likely to be come at or recovered by the county.

Int. 4th. State how much swamp land the county had control of at that time.

Ans. I can not state the exact amount that would go into the hands of the company, because we did not know.

Int. 5th. State what amount was represented the company would get.

Ans. I can not state at present from the fact a portion of the land was pre-empted and I did not know how much.

Int. 6th. Do you recollect the number of dollars the county was to get for the swamp land?

Ans. Two thousand dollars, I believe.

Int. 7. What price was the emigrant company to pay per acre?
465 (Objected to as not the best evidence, and seeking to vary the written agreement.)

Ans. One dollar per acre, I believe, was the price.

Int. 8th. What was it the two thousand dollars was to be paid for?

(Objected to by def't's counsel, for the same reasons as the last interrogatory.)

Ans. It was to be received as paid on the land. There was a good deal passed in ref*f*erence to the county holding the swamp landson the previous proving up by M'r Davis. There was a circular presented to the board calling upon the counties to prove up their swamp lands anew, and giving a description of the number of acres inundated or too wet to cultivate in the spring upon each 40 acres, the kind of timber that grew on it, and the kind of grass that grew on it. This circular purported to come from the land office, and was given us by John
466 Bixby, who said it was sent by M'r McKay. That was one reason why I went for disposing of the lands and to save the cost of a resurvey. I was willing to sell what we had of it more or less, another consideration was the improvements that were to be made on the lands.

Int. 9th. How much of the two thousand dollars was to be paid on

the indemnity scrip claim & funds on the United States? (Objected to by def't's att'y, because seeking to vary the contract.)

Ans. Not any.

Now the farther taking of depositions is adjourned until 9 o'clock to-morrow morning.

NOV. 22ND.

Examination of H. A. SMURR resumed; parties present same as yesterday.

Int. 10th. Who was the McKay that you have been speaking about; and who did he represent himself to be?

467 Ans. He represented himself to be the agent of the American Emigrant Company, and signed his name F. C. D. McKay, general agent of the American Emigrant Company for the State of Iowa.

Int. 11. State any representations McKay made to the board of supervisors before or at the time of making the written contract in regard to his own knowledge, or the knowledge of the American Emigrant Company, of the condition of the claims of Adams County against the general government for indemnity money and scrip.

Ans. I cannot say that he said positively that they knew only just what they could gather from circumstances; that he thought there would be no likelyhood that the county would get anything. These representations were made before the written contract was entered into.

Int. 12. State what knowledge the board of supervisors had in
468 regard to the condition of the claim of the county against the general government for indemnity money and scrip at the time the contract was made.

Ans. Previous to the time of the contract the sup'osition of the board was that the money would be recovered, and up to the time until this circular that was presented, as above refer'ed to, to the board was seen by the board. This circular conveyed the idea that we had to go through the ro'tine of proving up again.

Int. 13. State whether McKay made any representations outside of the circular, or in addition to it, & by whom was the circular signed.

Ans. I have no recollection that he did; and I don't now recollect by whom the circular was signed.

Int. 14. State whether or not the board relied upon the repre-
469 sentations made by the circular refer'ed to in making the contract; also state if you have any knowledge of the present existence of that circular.

(Objected to, 1st, as leading; 2nd, the circular has not been given in evidence; 3rd, the witness is not competent to speak of the state of mind of other members of the board; should state facts, & not his conclusions as to what they relied on.)

Ans. Yes; I should say they did. I gathered this from the discussion of the board on the subject of the circular. I have no knowledge of the present existence of that circular.

Int. 15. State in what township you reside; and also if a copy of the contract was posted in that township, or any proclamation for the election upon the contract prior to the election of 1862 upon the contract.

Ans. I reside in Queen City Township, Adams Co., Iowa. I have no
470 recollection of seeing any copy of contract, or proclamation in relation to said contract, posted. I live in the adjoining lot to the post-office, and near the school-house where the election was held. If such copy of contract or proclamation were posted, I proba'ly saw them, but have no recollection of seeing them.

Int. 16th. State what representations McKay made to the board of supervisors at the time the contract was entered into as to kind of emigrants would be settled upon the lands, & the price for which they were to be sold by the emigrant company to the settlers.

(Objected to by def't's att'y, because it seeks to change the terms of the contract, and is immaterial and incompetent.)

Ans. M'r McKay stated that they had their emigrant agent in New York City for the purpose of sending emigrants to the West and locating them on their lands, and that they would agree to sell this land at $1.25 c'ts per acre to emigrants. I cannot say what nationality of emigration he was to send, but they were to be men who would make good, respectable citizens.

471 Cross-examined:

Int. 1st. Could you identify the circular that you say McKay presented to the board if you now saw it?

Ans. I don't know that I could.

Int. 2nd. Have you been shown a printed circular by the pl'ff's att'y since your examination begun, and asked the question whether or not that was the paper presented to the board?

Ans. It strikes me that he did; but I cannot say certain. I cannot say what answer I did make.

Int. 3rd. At the time of the written contract how much land had been selected as swamp lands in Adams County? State about the number of acres.

Ans. I have no recollection about the number of acres.

Int. 4th. State about how many acres had been certified and approved by the general government at that time.

Ans. I have no recollection of the amount.

472 Int. 5th. Did you have any knowledge or information on the subject at the time the contract was made, and did you then know that the county claimed large quantities of swamp-land that had not been approved at that time?

Ans. I presume we had knowledge at that time, but I don't recollect at this time what it was. There was a large portion of swamp-land in the eastern part of the county, claimed by the county at that time, but did not know whether it had been patented or not.

Int. 6th. Who had been acting as swamp-land agent of the county and who made the swamp-land selections for the county & proofs prior to the time of the contract with the emigrant company?

Ans. Frank M. Davis.

Int. 7th. Was said Davis present at the time McKay had his interview with the board and at the time you say he made these representations?

Ans. I have no recollection that he was.

473 Int. 8th. Did M'r Davis have his office in the same building where the board was in session at that time and was he or not in town?

Ans. I cannot say whether he had or not and do not know whether he was in town or not.

Int. 9th. Did any member of the board propose to call in M'r Davis at that time and ascertain from him the condition of the swamp-land claim?

Ans. There might have been, but I have no recollection of it.

Int. 10th. Was McKay in town at the time Bixby handed the board the circular you have testified about?

Ans. I have no recollection whether he was or not.

Int. 11th. Was that circular handed to the board by Bixby at another and different meeting than the one on which McKay came forward and made a speech to the board, about which you have testified?

Ans. I think it was.

474 Int. 12. How many meetings of the board did McKay ever attend up to the time the contract was made?

Ans. I don't recollect; it may have been one and it may have been two; cannot say.

Int. 13th. Have you any recollection of ever seeing McKay at any other meeting of the board except the one at which the contract was made and prior to that meeting?

Ans. My impression is that he was here twice, but won't say certain.

Int. 14th. Was he ever present at any meeting of the board after the one at which the contract was made?

Ans. I don't recollect.

Int. 15. Do you recollect of his being present at the meeting at which the contract was made?

Ans. Yes, I think he was present.

Int. 16th. Were the statements to which you have testified made at that meeting?

Ans. I think they were.

475 Int. 17th. Did the board of supervisors ever have a meeting for the consideration of this contract except the one at which it was made, that is, prior to the making of it?

Ans. I have no recollection whether they had or not.

Re-examined:

Int. 1st. State in what respect the verbal statements of McKay at the time the contract was made differed from the circular on the question of indemnity claim.

Objected to by def't's att'y; because, 1st, no re-examination; 2nd, because for secondary evidence as to what was the contents of the circular; 3td, it is leading, in this, that the witness has already testified that he has no recollection of McKay making any statements on the subject.

Ans. His propositions at the time he mad' his propositions he made no ref/erence to the circular that I recollect of.

Recross-examination:

Int. 1st. Was the circular received before or after the contract was made?

476 Ans. Before; because I know it was because of the representations of the circular that I was willing to make the contract. I think McKay was here twice, and the circular, I think, was received beweetn the two meetings, but won't be positive about it.

(Signed) H. A. SMURR.

Fees claimed: 2 days & 6 miles, $2.60.

Subscribed & sworn to, by H. A. Smurr, before me & in my presence, this 22nd day of Nov., 1871.

JAMES WIDNER,
Special Commissioner & Examiner in Chancery.

I hereby certify that the foregoing is the true deposition of H. A. Smurr, which was subscribed and sworn to by said witness before me &

in my presence, at Quincy, Adams County, Iowa, this 22 day of Nov., 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

R. H. SCHOOLING, produced, sworn, & examined, deposes and says as follows:

Int. 1st. State your name, age, place of residence, and occupation.

477 Ans. My name is R. H. Schooling; age, 57 years; residence, Washington Township, Adams County, Iowa; occupation, farmer.

Int. 2nd. State how long you have lived in Adams County, what office you held, how long you was a member of the board of supervisors, and what years.

Ans. I have lived in Adams County 19 years; was a member of the board of supervisors from January, 1862, to January, 1868.

Int. 3d. State if you were present on the board of supervisors at the time the contract for the sale of the swamp-land was made. State who were the parties to that contract and date.

Ans. I was present when the contract was made. The parties were M'r F. C. D. McKay on the part of the American Emigrant Company, and the board of supervisors on the part of the county. I think the contract was made in September, 1862.

Int. 4th. State the representations that were made to the board at the time of making the contract and prior thereto in regard to

478 the value, amount, and validity of the swamp-land claims and titles.

(Objected to as immaterial and incompetent.)

Ans. The idea was held forth in his discourse to the board that we would not get but two thousand acres; that the rest of the claim was uncertain. We thought the county had at that time about 2,000 acres.

Int. 5th. State how much land the board of superv
county owned at the time of the contract, and the reason they had for supposing they had any.

Ans. We supposed we had the swamp-land by grant of the government. Dr. Trippett had made the selections. We supposed at the time we had about 2,000 acres, or a little more.

Int. 6th. What price was the Emigrant Company to pay per acre according to your agreement?

(Objected to, because the agreement is the best and only evidence competent.)

Ans. The price agreed upon was one dollar per acre.

479 Int. 7th. State what else was sold to the Emigrant Company in that contract beside the two thousand acres of land as talked over prior to the time the contract was reduced to writing.

(Objected to by def't's att'y because the contract is the best evidence.)

Ans. I don't recollect of anything.

Int. 8th. Why was it the written contract was drawn to include claims and funds on the United States Government?

Objected to by def't's attorney because the contract is the best evidence.

Ans. There was some talk about our having some claim. Davis had got up some proofs that I had no knowledge of at that time. This was under the second selection.

Int. 9th. State whether you had any knowledge of any claims against

the United States for money, or lands, or their value, at the time of making the contract.

(Objected to as leading and immaterial.)

480 Ans. Under the swamp-land law we supposed we had claims coming from the government. We had no knowledge of the last selection being accepted or approved.

Int. 10th. What representations did McKay make as to the validity or value of swamp-land claims or funds at the time of making the contract?

(Objected to by def'ts as immaterial.)

Ans. I can only answer by saying that he spoke slightingly of our getting it. I cannot give his language. I think he was here once before the time the contract was made. He was here when the contract was made, and once afterwards. There was a good deal said about these claims on the government. He held forth the idea that it was doubtful whether we would ever realize anything for our claims or not.

Int. 11th. State how much of the two thousand dollars that McKay agreed to pay to the county was in consideration of the assignment of claims for money & indemnity lands on the United States.

481 (Objected to by def'ts' att'y because the contract is the best evidence, and it calls for conclusion of the witness.)

Ans. My view was that we were selling him the two thousand acres of land for $2.000.

Int. 12th. What 2,000 acres of land were you selling?

(Objected to by def't's att'y for the same reasons as last interrogatory.)

Ans. Swamp-land, first selection.

Int. 13th. State whether or not the 2,000 acres of land was yet in the government, and is it the same as meant by the terms funds & claims on the United States.

(Objected to by def'ts as calling for secondary evidence and opinions of witness.)

Ans. I had no knowledge whether there were any patents for it or not.

Int. 14. State what was the consideration paid, or agreed to be paid, for the indemnity money and lands claimed to be and from the

482 United States, which you, the board, called uncertain.

(Objected to by def'ts because the contract is the best evidence, and as calling for the conclusion of the witness, and not for any facts that transpired at the time.)

Ans. I don't know that there was any part of the money.

Int. 15. Was the 2,000 acres the board claimed to own at that time the real subject matter sold or not?

(Objected to by def'ts' att'y for the same reason as last interrogatory.)

Ans. I considered that we was selling that, and that was the view that was held out when were taking a vote on it.

Int. 16th. State why it was that the claim on the U. S. for indemnity money was included in the contract at, or at whose instance, or for what purpose.

Ans. I can't answer that question; can't recollect enough to state. There was some talk, but I can't get it together to answer correctly.

483 Int. 17th. State anything you may know about three copies of the contract being posted up in Washington Township prior to the election.

Ans. I did not see any, to the best of my recollection.

Int. 18th. State what representations were made to the people on the day of the election that this contract with the Emigrant Company was voted on.

(Objected to by def'ts' att'y, because if true they would be immaterial, and if false, the defendant would not be responsible unless present by himself or agent.)

Ans. I was asked by several men the terms, and made a statement to them of my view of the contract; that we were selling them the land, 2,000 acres, at $1.00 per acre; and I also told them the land was to be settled, drained, and 5 acres on every 40 acres to be planted in timber, and 5 acres on every 40 acres to be planted in some kind of fruit trees.

Int. 19. Why did you represent these things to the people on the day of election?

(Objected to by def'ts as immaterial.)

484 Ans. I supposed that to be the sum and substance of the contract.

Int. 20. State what representations McKay had made to the board with regard to draining and settling the land if he secured it from the county.

(Objected to by def'ts' att'y, as seeking to vary terms of the contract & immaterial.)

Ans. I can only give what I recollect. He proposed to settle the land. He proposed to settle a certain portion in three years; don't remember the rest. Was to be sold in small tracts, not exceeding 160 acres; was to be drained and planted in timber, as before stated; something was said about putting sheep on it; don't recollect about that. It was to be settled by good citizens, or men that would make good citizens.

Int. 21. State whether you represented to the people at the election the same things that McKay had represented to the board or not.

485 (Objected to by def'ts, as leading and immaterial.)

Ans. That is a hard question to answer. I aimed to represent to the people the same that McKay did to the board, as far as I represented anything.

Int. 22nd. Have you any knowledge of the Emigrant Company settling, or draining, or improving any of the lands sold to them or contracted to be sold to them, or sending any emigrants into the county?

Ans. Two 40-acre tracts of land in Washington Township have been settled on; one since the contract, and one before. There are no emigrants sent into the county by them that I know of.

Int. 23. State what the vote was in your township on the contract.

Ans. I don't recollect exactly what the vote was. I believe a large majority was in favor of selling.

Int. 24. State whether or not the Emigrant Company had any

486 local agent in Adams County; and, if so, who & when?

Ans. John Bixby was acting as agent here; he was represented to be their agent; he commenced to act soon after the contract was made; can't say exactly when.

Int. 25. What did M'r Bixby do towards getting the people to adopt the contract with the Emigrant Company?

(Objected to by def'ts' att'y, as immaterial.)

Ans. He spoke favorably towards the sale of the land. I don't know of his taking an active part any farther than speaking favorable.

Int. 26. Were you a member of the board of supervisors at the time the deed was made for the swamp land; and, if so, state when it was?

Ans. I could not say certain. I think I signed the deed; have no recollection specially about it. The deed will show.

487 Int. 27. State whether the board of supervisors received a letter from McKay with regard to the deed about the time it was made.

Ans. We received a letter purporting to come from M'r McKay. It was read to the board.

[Witness is here handed a paper marked Letter of emigrant agent to the B. S. of Adams County, filed Sept. 7th, 1863, and asked the following question:]

State whether or not this is the letter; and, if so, make some mark or attach a copy that it may be identified.

Answer. I think this is the letter, and I attach a true copy, and make it a part of answer to this interrogatory, and marked "Exhibit A," with my genuine signature, R. H. Schooling.

(Here insert exhibit.)

DES MOINES, *Sept.* 1, 1863.

To the honorable board of supervisors of the county of Adams:

GENTLEMEN: The American Emigrant Company has entered already with great earnestness upon its system for procuring emigrants

488 and settlers to occupy the lands purchased of your and of other counties, and the promise of success to these efforts is such that no time can be lost on the part of the company in perfecting its titles and getting its lands ready for sale to its purchasers. It is especially desirable to the company that in those counties where in all probability its first settlements will be made, suitable conveyances should be made by the counties to the company at once, and with the least possible delay. I have therefore had prepared, under the direction of our counsellor, such a conveyance as is necessary to convey the lands of your county under the peculiar requirements of the statutes of this State directing the mode of conveyance in such cases. Such conveyance I herewith send you, embracing all the swamp lands of your county, the numbers of which have been obtained of the register of the State land office, and are believed to be entirely correct, and in order to prevent the conveyance to us of any lands to which we are not

489 entitled, you will find in the deed sent ample reservations, so that no lands not sold to us by you can possibly be conveyed by this deed, although they should be contained in the list of lands in the body of the deed.

I wish to call your attention particularly to the fact that the deed I send is a quitclaim deed, and also contains such reserves as will fully protect the rights of both parties (the county and the company) in making this conveyance, and I may add that I have been careful to draw it in all particulars so as to save the county from any covenant or condition you could have any objection to assuming. I cannot doubt you will find it in all respects very satisfactory. As the papers bear date the seventh day of September, I hope the business may be done on that day. If that cannot be done those dates may be changed, some blanks in dates may be left for you to fill.

Our counsel finds the laws of this State to be peculiar in regard

490 to such conveyances. Those laws will make it necessary that you enter on your record the whole package I send you enclosed, commencing with "whereas" on the ninth line from the top of the first page, and entering the whole from that word through to the end, including all the numbers, and descriptions of the lands. Also that the supervisors and clerk sign the deed in the places provided for that pur-

pose, and all acknowledge it before a notary public of the county, justice of the peace, or county judge, which will insert his official title in the certificate of acknowledgement, and will also insert the names of each of the supervisors, and the clerk in such certificate, and will affix his seal thereto. This acknowledgement must not be taken by your clerk.

If one of your number will move to adopt the preamble and resolutions contained in the package I send you, and which embrace the deed, and such motion prevails, you have done all you need to
491 do; but the vote must be taken by yeas & nays; the clerk can do the rest, that is, fill the blanks, if any are left, in the papers I send, enter the whole on the minutes, take the vote by yeas & nays, recording it as shown in the papers I send. When this is done the clerk & supervisors sign & acknowledge the deed, and the clerk fills the blanks relating to the vote, and make the certificate under his hand and seal, which is at the very end of the papers I send. You will observe the deed is not to be delivered to us until the mortgage is made to secure your county in the fullest manner for the performance of all the conditions contained in the agreement made between us.

The trustees of the company reside in Hartford. M'r Hammond is the president, M'r Hooker is the treasurer, and M'r Welch a director of the American Emigrant Company. As soon as possible after we are advised of your action of this matter, we shall make and deliver the mortgage. It is very desirable, if it can be done, that it should be
492 accomplished previous to your October meeting, at which time we shall wish to make some further arrangements with you having reference to the conveinence of settlers as they may come in, and to partial payments upon the mortgage from time to time, so that the lands of such settlers as pay for them may at once be discharged from its lien, and their title be unincumbered. Hoping this will all appear as satisfactory to you as it seems to me to be,

I am very respectfully your ob't servant,

F. C. D. McKAY,
Gen. Agent Am. Em. Co.

Exhibit A.

R. H. SCHOOLING.

I hereby certify that the foregoing is the true paper referred to as Exhibit A to R. H. Schooling deposition, and is a true copy of the original paper refered to.

493 Int. 28. State whether or not the deed was executed in pursuance of the request of that letter?

(Objected to by def't's att'y as leading).

Ans. I believe it was.

Int. 29th. State whether or not the emigrant company ever made a mortgage to the lands deeded to them to secure performance of the conditions of the contract of sale?

Ans. I don't recollect about any mortgage; have no knowledge of any mortgage.

Int. 30th. State what representations M'r McKay made at the time the contract was entered into with regard to his knowledge, or the knowledge of the American Emigrant Company about the condition and probability of recovering anything on the claim for indemnity scrip and funds against the United States?

Ans. He held forth the idea that it was doubtful about the county

getting anything. He did not state his source of information; he talked as if he had knowledge of it, but don't know that he gave his
494 source of information.

Int. 31st. What did the other members of the board of supervisors say about McKay's representations at that time?

Ans. I cannot recollect.

Int. 32nd. Can you recollect the substance of what the other members said without giving their exact language?

Ans. I think not. There was a good deal said, but I don't know as I can get it together so as to give an answer.

Int. 33. State whether or not the representations of McKay had any bearing upon your mind, as a member of the board, in fixing the terms of this sale, & state what influence?

(Objected to by def't's att'y as immaterial).

Ans. I don't know. I had but very little faith in him. I was doing business for the county. As far as my own feelings were concerned, it did not have much influence.

Cross-examined:

Int. 1st. At the time of this contract with the emigrant com-
495 pany, was anything said about the expense of selecting swamp lands incurred by the county, and to whom and to what amount they were then indebted on such account, and if so, what representations were made by the board to McKay?

(Objected to by pl'ff's att'y, as not proper cross-examination.)

Ans. I don't think I can come at anything definite; something was said, don't recollect what.

Int. 2nd. Was anything said during those negotiations about M'r Davis having selected any swamp lands for the county, or his having made any proofs?

Ans. I really don't recollect whether there was or not.

Int. 3td. Did you at that time know, as a member of the board, that M'r Davis had performed such service for the county, or that the county owed him anything on that account?

Ans. Personally, I did not.

Int. 4th. Did the emigrant company, in that contract, agree
496 to pay any expenses that had been incurred by the county for selecting swamp-lands, or making proofs of selecting; and, if so, had that agreement any reference to services performed by M'r Davis?

Ans. They were to step in of course and take our place in regard to the expenses, and fill our contracts; as far as any knowledge of M'r Davises claim, I knew nothing about it; some of the older members may have known about it. I thought we had settled up with and paid M'r Davis off.

Int. 5. State what land of the swamp lands you understood at that time Davis had any interest in, and how that interest originated, and what settlement had been made with him?

(Objected to by pl'ff's att'y, because witness is not asked to state any facts, and the evidence would be secondary, and not proper cross-examination.)

Ans. I did not know of any interest; the settlement I had refer-
497 ence to was the settlement for his trip to Council Bluffs land-office. I can't recollect how much land we gave him—to the best of my recollection about 600 acres—am not positive.

Int. 6th. State fully all the services, their nature and character, for which he received the 600 acres of swamp land in that settlement.

Ans. I believe he went on to the lands and examined them; he came to me and wanted me to act as a witness; it was very cold, and I did not go; he went on to the Bluffs and attended to the business for the county; he said he took less in the settlement than they had agreed to give him for his services.

Cross-int. 7. What number of acres of swamp lands did you deed to the American Emigrant Company in 1863?

Ans. Two thousand acres, to the best of my recollection, or thereabouts.

498 Cross-int. 8th. Did you read the deed before you signed it, or was it read in your presence & hearing?

Ans. I think it was read by some person; I did not read it.

Cross-int. 8th. Please examine the records of the deed contained in the minutes of the board, and refresh your recollection as to the number of acres, and state if the deed did not convey 3,680 $\frac{5}{100}$ acres?

Ans. I have no recollection of the amount; my impression was that we had deeded 2,000 acres for $1.00 per acre.

Int. 9th. State what amount, if any, it was estimated the emigrant company would have to pay, if any, for selecting the swamp lands, and please state further how they were to have lands at a dollar an acre, if you believed you only had 2,000 acres, and they were to pay the $2,000 and expenses?

Ans. I don't recollect that there was anything definite said
499 about the amount of the expenses. I did not suppose there was any expenses on the 2,000 acres that we were conveying to them.

Int. 10th. Was anything said in any of your negotiations with McKay at that time, by any member of the board to your knowledge, about Davis having any claim with reference to selecting or making proofs on the other swamp or indemnity lands?

Ans. I don't recollect anything about it; it seems as if something was said about something or somebody in Washington having something to do with it, but I can't tell anything about it.

Int. 11th. What was the company to receive for their taking the place of the county in paying all the expenses of the county for selections, with reference to those other lands and indemnity lands?

Ans. My view was, they were to get the land at a dollar an acre; that is, if they got any more than the 2,000 acres they were to have it for a dollar an acre.

500 Int. 12th. Was the contract read over to or by the members of the board at the time it was signed, and did you know what was in it when you signed it?

Ans. I think the contract was read over to the board when it was signed I suppose it had been read correctly before I signed it.

Int. 13. Was anything said by any member of the board, or by yourself at the time, about the written contract not containing a correct memorandum of your agreement with McKay?

Ans. I don't recollect that there was anything said about it.

Int. 14th. After the lapse of 11 years' time, is it not your opinion that the writing signed by the board and McKay is a more reliable evidence of your real agreement than your recollection of the talk between the board and McKay at the time?

(Objected to by pl'ff's att'y for incompetency.)

501 Ans. Yes.

Int. 15th. State with reference to what McKay said about planting timber and setting out fruit trees; if he did not only say this: that in making their contracts of sale to emigrants they would make it

one of the conditions of contract that the purchaser should set out five acres in timber and certain quantities of fruit-trees.

Ans. I think what I said was that he said he would have it done; that he would have the timber & fruit-trees planted as stated before he said this in his speech. I did not understand that this was in the contract, but said previous to the contract.

Int. 16. State whether or not the lands that were contracted to Davis in the settlement were contained in the deed to the emigrant company.

Ans. It seems to me they were, but I am not certain; cannot answer the question positively.

502 Int. 17. State when the emigrant company paid the $2,000 to the county.

Ans. I don't recollect exactly when it was.

Int. 18. Was it not about the time they got the deed?

Ans. That would be the natural conclusion, but I don't recollect when the money was paid.

Int. 19. Let me call your attention to that part of McKay's letter which he says, "We shall wish to make some further arrangements with you having reference to the convenience of settlers as they come in and to partial payments upon the mortgage from time to time, so that the lands of such settlers as pay for them may at once be discharged from its lien." Now state if the arrangement was not made that the company should pay at once the $2,000 down upon the delivery of the deed, and if it was not so done.

(Objected to by pl'ff's att'y not proper cross-examination, and
503 the evidence would be secondary if answered.)

Ans. I don't recollect anything about it.

Int. 20. State if you voted for the contract at the election.

Ans. I don't recollect whether I did or not; suppose I did.

Cross-int. 21st. State if you made your representation to the voters on your own account, or were you in any way in the employ of the emigrant company?

Ans. I was in no employ of the company; the statements were made at the request of the citizens that they might know the nature of the contract.

Int. 22. State when and in what transaction you first knew of Bixby being agent of the emigrant company.

Ans. I don't know of Bixby acting as agent before the election.

Re-examined:

Int. 1st. Do you know anything about the time of payment of
504 the $2,000, or whether it was ever paid?

Ans. I know nothing about the payment of it.

(Signed) R. H. SCHOOLING.

Fees claimed: 2 days & 6 miles, $2.60.

Subscribed & sworn to by R. H. Schooling before me and in my presence, this 22nd day of Nov., 1871.

JAMES WIDNER,
Special Commissioner and Examiner in Chancery.

I hereby certify that the foregoing is the true deposition of R. H. Schooling, which was subscribed and sworn to by said witness before me and in my presence at Quincy, Adams County, Iowa, this 22nd day of Nov., A. D. 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

And now the further taking of depositions in this cause is adjourned until 8 o'clock to-morrow morning.

505 NOVEMBER 23TH, 1871.

JOHN W. MORRIS, produced, sworn, & examined, deposes & says as follows:

Int. 1st. State your name, age, residence, and occupation.

Ans. My name is John W. Morris; age, 42 years; residence, Jasper Township, Adams County, Iowa.

Int. 2nd. How long have you lived in Adams County, and what acquaintance have you with the American Emigrant Company or its agents?

Ans. I have lived in Adams County 16 years; have seen McKay, the agent of the emigrant company; am acquainted with John Bixby, who claimed to be agent of said company in 1865 & 1866 & 1867.

Int. 3d. State if you were present when the board of supervisors were making a contract with the American Emigrant Company in regard to the sale of swamp lands; and, if so, state the time, place, and the substance of the negotiation.

(Objected to by def't's att'y, so far as it may relate to the terms of the contract in writing, as incompetent.)

506 Ans. I was not; I was present with the board when M'r McKay was present and made his proposition to the board at the September meeting of the board. I think it was in the year 1862; it was at the old court-house in Quincy, Adams County, Iowa. M'r McKay proposed to take the swamp-land at one dollar an acre and settle it and drain it. He proposed taking the land and furnish so many settlers; the number of settlers I cannot recollect. The land that we were talking about was that in the even sections; the amount spoken of previously by the board after the pre-emptors were deducted was supposed to be about two thousand acres. I did not hear McKay speak of the amount in his speech. The proposition of McKay was, that the company would take the land at $1.00 per acre and drain it; there was a certain portion to be settled; can't recollect the amount. He spoke of taking other counties in the same way; that was about the amount, except he was to plant certain portions in timber.

Int. 11. Did the board take a vote to accept the proposition?

507 Ans. I don't know of any vote being taken that evening.

Int. 5th. Did you have any other conversation with McKay, or hear him make any other declarations with regard to the purchase of swamp lands? If so, state what, when & where.

(Objected to by def't's att'y as immaterial.)

Ans. I had a talk with M'r McKay next day, I think, or day after. He was on his way to Bedford. I saw him in Brookville, in Adams County. He spoke of his trade or proposition. There were some three or four of us together when he stopped. This matter of the swamp land was spoken of. I spoke, or I think he asked us what we thought of the proposition. M'r Harlan, one of the board, was present. His remarks was that their proposition was perfectly fair, and he expected it to be performed and the land settled. That was about the substance of it.

Int. 6th. State whether you ever heard McKay say anything about the indemnity proofs, or claim on the U. S. for indemnity money.

508 (Objected by def't's att'y as immaterial.)

Ans. At this conversation we had with McKay at Brookville that was spoken of, and the land in the odd sections; McKay held forth

the idea that the county would never realize anything from them in the situation they were in.

Int. 7th. Had the contract been entered into by the board at the time you had this conversation with McKay at Brookville?

Ans. I don't know anything about it, whether they had voted on the contract or not.

Int. 8th. Was there anything said at any time about the indemnity proofs being rejected by the general government?

(Objected to by def't's att'y as immaterial.)

Ans. At this conversation in Brookville it was spoken of about the indemnity money that we had been making affidavits on. He (McKay) said we would never realize anything on them affidavits; that they would never amount to anything. That was about the amount.

509 Int. 9th. How many voters were present at that conversation?

Ans. I think there were some four.

Int. 10th. State what representations were made to the voters on the day of election with regard to that contract, and by whom made.

(Objected to by def't's att'y as immaterial.)

Ans. On the day of the election, the day the contract was submitted, M'r H. L. Harlow, the member of the board from our township, spoke of the matter and the proposition about as M'r McKay had, that he thought it was the best thing the county could do with the lands. There was some objection made to it by some of the electors, and his remarks was he admitted the land was low price, but with the advantage of settling, improving, and draining the lands without any further expense to the county that we would soon get back in taxation enough to make up for the low price of the lands.

510 Int. 11th. State whether there was any copy of the contract or any proclamation for the election posted in your township at the election, or prior thereto?

Ans. I did not know of any. Don't recollect of seeing any at the election, or any other time.

Int. 12th. State how the people knew what the provisions of the contract were.

(Objected to by def'ts as immaterial.)

Ans. I don't know what they all relied on. For myself, I had heard the proposition, and M'r Harlow had represented the contract to me that they (the board) had went into it and were submitting it to the people, and if they sanctioned it they would close the contract.

Int. 13th. State whether or not M'r Harlow represented the same things to other voters at the election, and state what he did.

(Objected to by def'ts as immaterial.)

Ans. These representations spoken of were made to six or eight

511 of us in a crowd. He was there most of the day at the polls. He was also a candidate for re-election. Don't know that these representations were repeated during the day. M'r W'm R. Evins objected to selling the land on the contract. This was in the morning, and it was then in answer to M'r Evins that M'r Harlow made the statements.

Int. 14th. Did Harlow represent what the substance of the contract was to the people?

(Objected to by def'ts as leading and immaterial.)

Ans. He spoke of the contract, & represented to the people what the company proposed to do. He said they proposed to take the land that was in even sections that was not pre-empted, amounting to about 2,000 acres.

Int. 15. Do you remember how the electors voted that day on the question?

Ans. My recollection is that there was only one vote against the proposition. There were about a dozen votes cast on the question. A
512 good many did not vote at all on the question. M'r Evins and myself both claimed at the time to have voted against it.

Int. 16th. State if you have any knowledge of the Emigrant Company sending any emigrants to Adams County or draining or improving any of the swamp land of Adams County.

Ans. I don't know of any emigrants sent here by the Emigrant Company. Some have bought land of the company. Parcher bought one tract, and Romangs bought one tract. W. Hardesty bought one tract that is not improved. Hardesty has cut the timber, or the best of it, off of the tract he bought.

Int. 17th. State whether you were a member of the board of supervisors of Adams County in the year 1866.

Ans. I was.

Int. 18. State what transpired at a specid meeting of the board held in the month of March, 1866, in regard to the allowance of a claim
513 of F. M. Davis for procuring proofs of indemnity money or scrip. State particularly what representations were made to the board by the American Emigrant Company or their agents.

(Objected to by def't's att'y because the minutes of the board is the best evidence of what transpired, and calls for evidence immaterial to any issue in this cause.)

Ans. There was a motion made at that time to allow the claim of M'r Davis, about $2,200 *dollars*, for procuring proofs for indemnity money. It was discussed at some length, & we reached a vote some time in the afternoon, and the motion was lost. I think M'r Bixby made this remark, that if the board would, or that the emigrant company would abide the event of the suit, that they would furnish attorneys' to defend the county against M'r Davis; Bixby's language is about this, for the board to reject the claim, and in case suit was brought, the emigrant company would aid the county with counsel and abide the event of the suit; this was about the sum of it.

514 Int. 19. State if this proposition of Bixby's was made before the vote which rejected Davises claim was had.

(Objected to by def't's counsel for the same reason as the last, and as calling for incompetent evidence.)

Ans. It was had before we voted; it was proposed by M'r Bixby once before dinner and once after dinner.

Int. 20. State in whose interests Bixby was acting and by what authority he claimed to speak for the emigrant company, if he spoke for them.

(Obj. to by def't because leading, & calling for incompetent evidence.)

Ans. I don't recollect whether he represent' he was agent then or not.

Int. 21st. State what you know about suit being brought upon the claim you then rejected, and also state the result of the suit, and who acted as attorneys in the suit for the county, and when and where the suit was tried.

(Objected to by def'ts as immaterial & incompetent.)

515 Ans. Suit was brought on the claim by Davis, and John Bixby was employed by the chairman of the board, B. O. Stevenson. The suit was brought at first against the county and emigrant *county* together; afterwards an attorney came down from Des Moines for the

emigrant co., and the suit was dismissed as to the emigrant company; the suit went on against the county. It was changed to Page County. The first hi'ch we had was in the fall of 1867 or 1866. Judge N. B. Moore, of Clarinda, assisted John Bixby in behalf of the county. We did not reach a trial that term and it was continued till next March succeeding. N. B. Moore and John Bixby and another attorney attended to the case, Bixby & the other attorney was paid by the county, N. B. Moore was not paid by the county. We had a jury case, and Davis obtained judgment against the county.

Cross-examined:

Int. 1st. State whether or not you voted for the contract at the election.

Ans. I don't think I did.

516 Int. 2nd. State what objections you had to it at the time.

Ans. I thought the land was offered too low.

Int. 3. State if you made any *agreement* against it in talking to voters at the election.

Ans. I did in connection with M'r Evins in the money; I stated my objections.

Int. 4. What other objections did you or M'r Evins make other than that the land was too low?

Ans. I objected to it on the grounds as passing into the hands of a company, and spoke of the railroad company that we mostly considered a swindle at that time. If the company got it they would hold it for speculation instead of settlement, as the railroad company had, and it was getting our land in a fix that settlers could not get it.

Int. 5. Was any thing said or objection made on the ground of the company getting the indemnity money or indemnity lands?

517 Ans. I don't know that I heard anything said about that day.

Int. 6th. What was said about that in your conversation with McKay at Brookville?

Ans. This was spoken of by C. L. Roberts, one of the parties that was present or by. Hamilton spoke of the matter whether we could recover anything on the lands, or rather the affidavits; McKay advanced the idea that the affidavits never would amount to anything, that the county never would get anything out of them.

Int. 7th. Did he say that the company would have to take other affidavits or proofs before the indemnity could be obtained?

Ans. No; he did not.

Int. 8th. At the time you heard McKay make these remarks to the board of supervisors were you a member of the board?

Ans. No, I was not.

Int. 9th. Did you hear all of McKay's remarks on that occasion,

518 or were present until the board adjourned in the evening?

Ans. I heard his speech that he made to the board, but was not present at the time they adjourned; he may have made other remarks to the board that I did not hear; but I was in town till evening and went home with M'r Harlow, one of the members of the board.

Int. 10th. Did you see any written contract or proposition in writing for a contract that day? Did McKay present any written paper to the board during or after his speech?

Ans. I think he had a paper in his hand of some two or three leaves legal cap, and spoke about his propositions in other counties. He had made a like contract or agreement in other counties. I don't know that he presented any written contract that day.

Int. 11. What counties did he name as having contracted with?
519 Ans. I don't know that he had contracted with any; he was aiming to contract with Page & Taylor Counties.
Int. 12th. Did he say that he had been to Page and Taylor, or was going there?
Ans. I understood he had been there before he came here, and was going again.
Int. 13. Did you understand from his remarks that this was his first visit to the board of supervisors of Adams County?
Ans. I got the idea that this was his first visit to the board, but that he had corresponded before.
Int. 14. Did you understand that any contract was signed between McKay & the board at that time?
Ans. My understanding was that they had agreed upon terms to be submitted to the people, but don't know whether there was any writing or not.
Int. 15. Did McKay, in his speech before the board, say any-
250 thing about indemnity lands or indemnity funds?
Ans. I don't recollect of hearing anything to that effect that day.
Int. 16. Did he make any reference to any printed circular upon the subject of the swamp-land proofs, or affidavits upon the odd sections?
Ans. I don't recollect of any.
Int. 17. Did he make any reference to any expenses that had been incurred by the county in making such selections or proofs?
(Objected by pl'ff's att'y as not proper cross-examination.)
Ans. I don't recollect of any.
Int. 18. Did you hear anything said that day between McKay & the board about any claim that Davis had against the county for making such proof?
Ans. I did not.
Int. 19. How did you vote on the resolution relating to allowing Davises account?
521 Ans. My recollection is I voted in favor of allowing the account; there was three in favor of and five against it.
(Signed) J. W. MORRIS.

Fees claimed: 2 day' & 6 miles, $3.60.

Subscribed & sworn to by J. W. Morris this 23 day of Nov., 1871.
JAMES WIDNER,
Special Commissioner and Examiner in Chancery.

I certify that the foregoing is the true deposition of J. W. Morris, which was subscribed & sworn to by said witness before me and in my presence in Quincy, Adams Co., Iowa, this 23 day of Nov., 1871.
JAMES WIDNER,
Special Ex. & Commissioner.

H. G. AKENY, produced, sworn, and examined, deposes and says as follows:
Int. 1st. State your name, age, residence, and occupation.
Ans. My name is Henry G. Ankeny; age, 43 years; residence, Quincy Township, Adams County, Iowa; occupation, farmer.
522 Have lived in Quincy T'p 12 years.
Int. 2. State whether you have held any county office; when and how long. State what office it is, and what times.

Ans. I have been a member of the board of supervisors from Jan'y, 1868, to the present time.

Int. 3rd. State what you know about making a demand of performance of the contract of sale of the swamp lands from Adams County to the American Emigrant Company. State when it was and particulars.

Ans. The first demand was made at the Sept. session of the board, 1868. By motion of the board, I was directed to write to M'r J. C. Savery, asking him for a final settlement of the judgment obtained by M'r Davis against Adams County, amounting to about $2,200, and the costs. It was understood that Mr. Savery was agent of the emigrant company at that time. M'r Savery answered me. M'r Savery made every promise to make everything satisfactory with regard to that judgment of
523 Davis against Adams County. The next demand was made at the January session of 1869. M'r Hunter, a member of the board of supervisors, was authorized by the board to make a final demand for settlement of the claim of F. M. Davis against Adams County. M'r Hunter proceeds to Des Maines and reported M'r Savery absent, and accomplished nothing. About the 20th of January, by a resolution of the board supervisors, Neill Thompson & myself were authorized to proceed to Des Moines to effect a final settlement with the emigrant co. M'r Neill & myself proceeded to Des Moines and found M'r Savery absent. We saw M'r Skinner, who we found in the office of Savery, and made a demand for final settlement of him. M'r Skinner informed us that he had no authority to make a settlement, but that M'r Laughlin, who had charge of the business in Adams County, would proceed at once to Quincy and make a final settlement, and that any settlement that he made would be approved by M'r Savery & the company. M'r Skin-
524 ner showed me a telegram that he said he had sent to Laughlin, and said he had no doubt he would be in Quincy as soon as we would. This was about the 4th of February, 1869.

(The above answer objected to so far as it states the contents of letters or the proceedings of the board, or the statements of third persons.)

Int. 4th. State what the committee who had been appointed by the board did after you saw Skinner.

Ans. We came home from Des Moines and delayed waiting for M'r Laughlin to come until about the 20 of April, when an extra session of the board was called, and we reported what the committee had done. M'r Laughlin had not come up to that time.

Int. 5th. State what the board did with the local agent with regard to a settlement, or what demand the board made on the local agent for settlement.

Ans. I don't recollect that the board made any demand on
525 Bixby. M'r Bixby told them that he had no authority to make any settlement. M'r Bixby was very anxious for the company to make a settlement with the county. He said that the company had not done what they agreed to, and he did not care what the board done.

(This answer objected to by def't's att'y so far as it contains the statements of Bixby.)

Int. 6th. State what attorneys the county employed to defend the suit of F. M. Davis against Adams Co.

Int. 6. State the amount of judgment, costs, and incidental expenses connected with the suit of Davis against Adams County, and paid by the county.

(Objected to by def't's att'y as immaterial and not the best evidence.)

Ans. Up to January, 1869, the amount of judgment and costs were $2,735.50 paid.

Int. 7. State if you have any knowledge of any emigrants being settled in Adams County by the emigrant company, or any knowledge of any lands drained or improved by them.

526 Ans. I have no knowledge of any lands being settled upon by emigrants sent by the emigrant company.

EXHIBIT A.

Jan'y session, 1871. Jan'y 7, 1871. Swamp-land resolution.

On motion the following resolution is adopted:

Resolved by the board of supervisors of Adams County, Iowa, That in the name of and for the use of Adams County, Iowa, formal demand be, and is hereby, made by the board of supervisors of Adams County, Iowa, of the American Emigrant Company, of J. C. Savery, their general agent for the State of Iowa, at his office in Des Moines, Iowa, for the sum of two thousand seven hundred and thirty-five dollars and sixty cents (2,735.60), the amount of judgment, costs, &c., paid by Adams County, in the suit wherein Frank M. Davis was plaintiff and Adams County, Iowa, defendant, in which judgment was rendered in the Page County, Iowa, district court, March 23, 1867, which money was paid for the use of the said emigrant company, and we here-

527 by demand and require the immediate and unconditional payment of said sum of money to the bearer of this resolution, who is hereby appointed a special committee of this board to proceed to Des Moines, Iowa, present a certified copy of this resolution, receive and receipt for said money, and report to the board.

And now Robert Hunter is appointed the special committee, as contemplated in the above resolution, with instructions to proceed at once to Des Moines on said business, and is instructed to report his doings in the premises to this board on the 22nd day of Jan'y, 1869, to which time it is, on motion, carried that when this board adjourns it adjourns to meet on that day, to wit, Jan. 22nd, 1869.

JAN. 22, 1869.

Now comes Supervisor Bixber and makes verbal report for Supervisor Hunter, to the effect that he had been to Des Moines, as directed at the last meeting of the board of supervisors, but failed to obtain a conference with the authorized agent of the Americant Emigrant Company, in consequence of his being absent from the State, and had therefore no definite answer from the said company to report.

528 EXHIBIT B.

Adjourned session, Jan. 30, 1869. Swamp land resolution.

On motion the following resolution was adopted:

Resolved That a committee of three be appointed by the board to take under consideration the claim of Adams County against the American Emigrant Company, and proceed as deemed by them just and proper in the settlement of the same, with authority to notify the county auditor to issue a call for a meeting of the board of supervisors, if a necessity for such a meeting be in their opinion required; when, on motion, H. G. Ankeny, John Neill & W. D. Thompson are appointed as such committee.

EXHIBIT B.

Special session, April 21st, 1869.

Now comes John Neill & H. G. Ankeny, for the committee appointed to try and effect a settlement with the American Emigrant Company, and submit there verbal report, to wit, that two of the committee went to Des Mo'nes on said business, and, not finding J. C. Savery, the
529 agent of said company, at home, they made arrangements with Skinner, acting agent in the absence of J. C. Savery, which they at the time were led to suppose would result in an amicable settlement, and that the said company had failed to complete the arrangement as agreed upon.

On motion the report is accepted and committee discharged.

Nor have I any knowledge of any lands being drained by them, or improved by them.

Cross-examined:

Int. 1st. State if, at the time you visited Des Moines, you presented to or left with M'r Skinner any written statement or memorandum of what the county demanded.

Ans. I carried a certified copy of the resolution of the board authorizing us to make a settlement. I did not leave it with him, and I have no recollection whether I showed it to him or not.

530 Int. 2nd. Will you please furnish a copy of that resolution from the record, and state the date on which the resolution was adopted, and also give a copy of the resolution that authorized Hunter to go to Des Moines, and give the date and copy of the resolution & copy of Hunter's report.

Ans. I herewith attach copies of the resolutions and report & dates, marked "Exhibit A," & make them answer to this interrogatory.

Re-examined:

Int. State what was said by Mr. Skinner to you in regard to the resolution sent up by M'r Hunter, at the time you talked to him on the 4th of February.

Ans. I informed M'r Skinner that this was the second attempt we had made to come to a final settlement. M'r Hunter had been there in January to see M'r Savery and make settlement. M'r Skinner remarked that he was very happy to make M'r Hunter's acquaintance; that he found him a very fine gentleman.

531 Int. 2nd. State what report the committee which you were on that went to Des Moines made to the board of supervisors, and attach a copy marked "Exhibit B" from the record.

(Objected to by def't's att'y as incompetent.)

Ans. We made a report, and I herewith copy marked "Exhibit B."

Int. 3. State what was done with the letter that you received from M'r Savery.

Ans. I gave it to M'r John Bixby, county auditor, and directed him to place it on file.

Int. 4. State whether or not M'r Bixby at the time you handed him the letter claimed to be acting as the agent of the American Emigrant Company or not?

Ans. He did.

Recross-examined:

Int. When you handed him the letter what did he say about acting as the agent of the emigrant company?

532 Ans. He did not say that he was agent of the company then, but he told me so before and since, and I know he was.

Int. 2. State if you have not already testified that Bixby told you and the members of the board of supervisors that he had no authority to act for the emigrant company in relation to this settlement, and did you not so understand when you handed him that letter?

Ans. Yes.

(Signed) H. G. ANKENY.

Subscribed and sworn to by H. G. Ankeny before me and in my presence, this 23 day of Nov., 1871.

JA'S WIDNER,
Special Commissioner and Examiner in Chancery.

Fees claimed: 3 days & 2 miles, $3.20.

I hereby certify that the foregoing is the true deposition of H. G. Ankeny, which was subscribed and sworn to by said witness before me and in my presence at Quincy, Adams Co., Iowa, this 23 day of Nov., 1871.

JAMES WIDNER,
Special Commissioner & Examiner.

533 CHARLES BIXLER, produced, sworn, and examined, deposes and says as follows:

Int. 1st. State your name, age, residence, and occupation.

Ans. My name is Charles Bixler; age, 45 years; residence, Douglas Township, Adams County, Iowa; occupation, farmer; have lived in Adams County 17 years.

Int. 2nd. State what you know about Adams County selling the swamp lands to the American Emigrant Company; state what transpired at the general election in the fall of 1862 in relation to the contract for the sale of said swamp lands.

(Objected to by def't's att'y for immateriality.)

Ans. It was said the county had acted on the matter to sell the land, and it was said it would be better for the county to sell the land, that what the land was sold at was all we would ever get anyhow; at the election it was represented to us that we had better sell the

534 land than to keep it; it is these representations were made before the election by John Bixby, and at the election it was the general talk.

Int. 3. State to whom you was going to sell the land, what reason was given why it would be better to sell, how many lands were sold, and what price.

(Objected to by def't's att'y because the contract was in writing and the American Emigrant Company is in no wise responsible for the ignorance of voters, or the misunderstanding of persons who neither sought or obtained any information from their agents; it is therefore immaterial and incompetent.)

Ans. We were going to sell the land to what we called the emigrant company; the reasons given was that it would be better for the county to sell the land and have it improved. We supposed we were selling about 2,000 acres of land at one dollar an acre if I recollect right.

Int. 4. What were the emigrant company to do with the land?
535 (Objected to by def'ts for the same reasons as the last.)
Ans. They were to send settlers on it and improve and have the land ditched.
Int. 5. State whether or not there was any copy of the contract posted at the place of election or any place in the township to your knowledge.
Ans. I don't recollect that whether I seen any or not.
Int. 6. How much of the 2,000 acres that you were selling was in Douglas Township?
(Objected to by def't' att'y the same as to the third interrogatory.)
Ans. Well, I don't know as I can tell without a map. I would think there was some 300 or 400 acres.
Int. 7th. State how much of it has been settled, improved, or ditched by the emigrant company or by persons set by them.
Ans. Not any that I know of.
Int. 8. Do you know of any emigrant or settlers in Adams
536 County sent here by the emigrant aid company?
Ans. Not any.
(Signed) CHARLES BIXLER.

Fees claimed: 3 day' & 5 miles, $3.50.

Subscribed and sworn to by Charles Bixler before me and in my presence this 23 , 1871.

JAMES WIDNER,
Special Commissioner and Examiner in Chancery.

I certify that the foregoing is the true deposition of Charles Bixler which was subscribed and sworn to by said witness before me and in my presence at Quincy, Adams Co., Iowa, this 23 day of Nov., 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

JOHN BARNETT, produced, sworn, and examined, deposes and says as follows:

Int. 1st. State your name, age, residence, and occupation.
Answer. My name is John Barnett; residence, Douglas Township, Adams County, Iowa; have resided in said township 17 years; my age is 58 years and occupation a farmer.
537 Int. 2nd. State if you knew John Bixby and F. C. D. McKay, in the year 1862; state their occupation.
Ans. I knew them at that time, Bixby, I think, was clerk of the district court, and ex officio clerk of the board of supervisors, McKay represented himself a general agent of the American Emigrant Company.
Int. 3. State what you know about the manner of conducting the election for the sale of swamp lands from Adams Co. to Emigrant Co., at the general election in the fall of 1862.
(Objected to by def't's att'y as immaterial.)
Ans. I recollect it was put upon all the democrat tickets that was used in the county "for the sale of swamp land." I was told some was scratched off. I wrote this upon the democrat tickets by the request of M'r McKay, believing it was to the interest of the county to sell the land under the contract, M'r McKay said if I would do so he would compensate me for so doing, he left little billets to be pasted on the tick-
538 ets on which was printed "for the sale of swamp land." These billets had mucilage on the blank side to make them stick on the tickets. I did not use any of them. I was clerk of the election and

Recross-examined:

Int. When you handed him the letter what did he say about acting as the agent of the emigrant company?

532 Ans. He did not say that he was agent of the company then, but he told me so before and since, and I know he was.

Int. 2. State if you have not already testified that Bixby told you and the members of the board of supervisors that he had no authority to act for the emigrant company in relation to this settlement, and did you not so understand when you handed him that letter?

Ans. Yes.

(Signed) H. G. ANKENY.

Subscribed and sworn to by H. G. Ankeny before me and in my presence, this 23 day of Nov., 1871.

JA'S WIDNER,
Special Commissioner and Examiner in Chancery.

Fees claimed: 3 days & 2 miles, $3.20.

I hereby certify that the foregoing is the true deposition of H. G. Ankeny, which was subscribed and sworn to by said witness before me and in my presence at Quincy, Adams Co., Iowa, this 23 day of Nov., 1871.

JAMES WIDNER,
Special Commissioner & Examiner.

533 CHARLES BIXLER, produced, sworn, and examined, deposes and says as follows:

Int. 1st. State your name, age, residence, and occupation.

Ans. My name is Charles Bixler; age, 45 years; residence, Douglas Township, Adams County, Iowa; occupation, farmer; have lived in Adams County 17 years.

Int. 2nd. State what you know about Adams County selling the swamp lands to the American Emigrant Company; state what transpired at the general election in the fall of 1862 in relation to the contract for the sale of said swamp lands.

(Objected to by def't's att'y for immateriality.)

Ans. It was said the county had acted on the matter to sell the land, and it was said it would be better for the county to sell the land, that what the land was sold at was all we would ever get anyhow; at the election it was represented to us that we had better sell the

534 land than to keep it; it is these representations were made before the election by John Bixby, and at the election it was the general talk.

Int. 3. State to whom you was going to sell the land, what reason was given why it would be better to sell, how many lands were sold, and what price.

(Objected to by def't's att'y because the contract was in writing and the American Emigrant Company is in no wise responsible for the ignorance of voters, or the misunderstanding of persons who neither sought or obtained any information from their agents; it is therefore immaterial and incompetent.)

Ans. We were going to sell the land to what we called the emigrant company; the reasons given was that it would be better for the county to sell the land and have it improved. We supposed we were selling about 2,000 acres of land at one dollar an acre if I recollect right.

Int. 4. What were the emigrant company to do with the land?
535 (Objected to by def'ts for the same reasons as the last.)
Ans. They were to send settlers on it and improve and have the land ditched.

Int. 5. State whether or not there was any copy of the contract posted at the place of election or any place in the township to your knowledge.

Ans. I don't recollect that whether I seen any or not.

Int. 6. How much of the 2,000 acres that you were selling was in Douglas Township?

(Objected to by def't' att'y the same as to the third interrogatory.)

Ans. Well, I don't know as I can tell without a map. I would think there was some 300 or 400 acres.

Int. 7th. State how much of it has been settled, improved, or ditched by the emigrant company or by persons set by them.

Ans. Not any that I know of.

Int. 8. Do you know of any emigrant or settlers in Adams
536 County sent here by the emigrant aid company?

Ans. Not any.

(Signed) CHARLES BIXLER.

Fees claimed: 3 day' & 5 miles, $3.50.

Subscribed and sworn to by Charles Bixler before me and in my presence this 23 , 1871.

JAMES WIDNER,
Special Commissioner and Examiner in Chancery.

I certify that the foregoing is the true deposition of Charles Bixler which was subscribed and sworn to by said witness before me and in my presence at Quincy, Adams Co., Iowa, this 23 day of Nov., 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

JOHN BARNETT, produced, sworn, and examined, deposes and says as follows:

Int. 1st. State your name, age, residence, and occupation.

Answer. My name is John Barnett; residence, Douglas Township, Adams County, Iowa; have resided in said township 17 years; my age is 58 years and occupation a farmer.

537 Int. 2nd. State if you knew John Bixby and F. C. D. McKay, in the year 1862; state their occupation.

Ans. I knew them at that time, Bixby, I think, was clerk of the district court, and ex officio clerk of the board of supervisors, McKay represented himself a general agent of the American Emigrant Company.

Int. 3. State what you know about the manner of conducting the election for the sale of swamp lands from Adams Co. to Emigrant Co., at the general election in the fall of 1862.

(Objected to by def't's att'y as immaterial.)

Ans. I recollect it was put upon all the democrat tickets that was used in the county "for the sale of swamp land." I was told some was scratched off. I wrote this upon the democrat tickets by the request of M'r McKay, believing it was to the interest of the county to sell the land under the contract, M'r McKay said if I would do so he would compensate me for so doing, he left little billets to be pasted on the tick-
538 ets on which was printed "for the sale of swamp land." These billets had mucilage on the blank side to make them stick on the tickets. I did not use any of them. I was clerk of the election and

not have an opportunity of saying much about it on the day of election. I was busy and have no recollection of doing or saying much.

(Answer objected to by def't, as incompetent and immaterial.)

Int. 4. State whether there was any copy of contract or proclamation posted in your township on the day of election, or previous thereto, to your knowledge.

Ans. I have no positive recollection of there being any.

Int. 5. What way had the people of finding out what the contract contained at that election?

(Objected to by def'ts, as incompetent and immaterial.)

Ans. I do not know.

Int. 6. Had they any way but by common talk?

539 (Objected to by def'ts, as leading and incompetent.)

Ans. I know of no other way. I don't recollect whether it was posted or not.

Int. 7. Did you ever receive any compensation from McKay for filling up the tickets, or for your influence at the election?

Int. 7. Did you receive any compensation? and if , state what it was for.

Ans. I received three dollars, I think I got it from the treasurer of the emigrant company. I received it for my services writing the proposition for the sale of swamp lands on the tickets.

Int. 8th. State whether you spoke favorably for the adoption of the contract prior to the day of election.

(Objected to by def'ts, as immaterial.)

Ans. I did.

Int. 9. Did McKay request you to use your influence for the adoption of the proposition?

(Objected to by def'ts, as immaterial.)

Ans. He did.

540 Int. 10. Was the three dollars received for writing the proposition on the ticket alone?

Ans. That was all I intended to charge for.

Int. 11. Did any of the voters ask you what the contract was at the day of election, or prior to the day of election, and, if so, what did you tell them?

(Objected to by def'ts as immaterial)

Ans. I believe there was. I told them the contract with the company was that the company was to pay $2,000 for the swamp land, and settle the same with emigrants, and that would be more advantage to the county than to keep it in an unsettled state, or to that effect.

Int. 12. What did you tell them as to the number of acres of land it was proposed to sell to the emigrant company?

(Def'ts objects to last interrogatory for same reasons as the former.)

Ans. About two thousand acres.

541 Int. 13th. Why did you tell that it was about two thousand acres?

(Objected to by def'ts, as immaterial.)

Ans. That was the calculation made by the board of supervisors and McKay to be about what the county owned.

Int. 14. Were you chairman of the board of supervisors at the time the contract was made?

Ans. I was.

Int. 15. Why was it the word "fund and claim" of the county on the general government was inserted in the contract?

(Objected to by def'ts, as incompetent and immaterial.)

Ans. It was to include the funds that was known as the indemnity money or funds that was thought to be doubtful to obtain.

Int. 16. Why was it you thought the indemnity fund and claim was doubtful at the time the contract was made?

(Objected to by def'ts, as immaterial.)

542 Ans. We were told so by M'r McKay, and we had no other means of information at that time to my knowledge.

Int. 17. In arranging the terms of the contract, how much was the emigrant company to pay for the fund and claim on the general government apart from the lands.

(Objected to by def'ts, because the contract is the best evidence.)

Ans. In arranging the written agreement it was put down together.

Int. 18. What was said at the time the contract was made, or prior thereto as to the value of the fund and claim on the general government by McKay?

(Objected to by def'ts, as immaterial.)

Ans. He said the company would not give anything for the claims, as they were doubtful, they wished to have them with the land.

Int. 19. What representations did McKay make to the board

543 about the condition of the claims on the general government at and prior to the time of the contract?

Ans. He represented to the board that the claims were doubtful, and might cost as much as they were worth to get them, if they were got at all.

(Answer objected to by def'ts att'y as immaterial.)

Int. 20. State what the members of the board said in regard to these representations of McKay about the doubtfulness of these claims.

Ans. The general talk of the board was to let the emigrant company have the land and the claims for $2,000. This was the final decision they talked among themselves, and I could not tell what they said. There were no speeches made, except what McKay made.

Int. 21. At the time you made these representations to the people about the contract did you say anything about the claims and funds being included in the contract?

(Objected to by def'ts for being immaterial and incompetent.)

544 Ans. I did not. I thought they were of no account. I felt it made no difference.

Int. 22. What was said between McKay and the board at the time the contract was made about putting the funds and claims on the general government into the contract?

Ans. I asked McKay to take the lands for $2,000, and leave the claim out. He said, no, no; he wanted the claims along, and we would be clear of the whole trouble, or something to that effect. I was chairman of the board, and he, McKay, was making a speech; and this was said in the hearing of the other members of the board.

Int. 23. Do you know of McKay having anybody to assist him with their influence or their labor in carrying the vote for the contract.

(Objected to by def'ts as immaterial.)

Ans. M'r McKay told me that John Bixby was going to attend

545 to the Republican tickets of the county, and he wanted I should attend to the Democrat tickets, with ref*f*erence to writing the words "for the contract," on the tickets. I don't recollect of seeing any of the Republican tickets.

Int. 24. State if you know of John Bixby receiving any pay for those services, or for any services at that election, and state who from, and what amount.

Ans. Either John Bixby or McKay told me that he, Bixby, received ten dollars from the emigrant company for his services, and making a speech in Queen City in favor of the swamp land proposition.

(Answer objected to by def'ts att'y as hearsay evidence.)

Cross-examined:

Int. 1st. State if McKay was before the board at any time before the contract was signed; and if so, how long before?

Ans. He was at the previous meeting.

Int. 2. At which meeting was it he made the speech, and the talk was had of which you have testified?

546 Ans. At the meeting the time he had the contract. I think it was the second meeting.

Int. 3. When was the written contract presented to the board; at the first or second meeting?

Ans. At the second meeting.

Int. 4. Was the contract written out by McKay and read by him to the board during his remarks?

Ans. Yes; it was.

Int. 5. Did he read it as it was written, or did he make any misrepresentations as to its contents?

Ans. I do not know that he misrepresented it.

Int. 6. Could all the members of the board of supervisors read writing and write their names?

Ans. I believe they could.

Int. 7. Were you employed by any person to misrepresent the contract to the people of Adams County, or did you knowingly make

547 any such misrepresentations at or before the election?

Ans. I was not and did not, to my knowledge.

Re-examined:

Int. 1st. State whether or not you relied upon the representations of McKay as to the subject-matter of the contract at the time of making the contract.

(Objected to by def'ts as immaterial.)

Ans. Yes; I relied on what he read as to the contract. I believe he read it right.

Int. 2. Who drew up the written contract?

Ans. M'r McKay said he did.

Int. 3. Who read the contract, after it was written, to the board?

Ans. McKay.

Int. 4. Was it read over by any member of the board, or the clerk, or any other person, before signing?

Ans. I do not remember as it was. I don't recollect of reading it before I signed it.

(Signed) JOHN BARNETT.

Fees claimed: 2 days & 4 miles, $2.40.

548 Subscribed and sworn to by John Barnett, before me and in my presence, this 23 day of Nov., 1871.

JAMES WIDNER,
Special Commissioner and Examiner in Chancery.

I hereby certify that the foregoing is the true deposition of John Barnett, which was subscribed and sworn to by said witness before me and

in my presence, at Quincy, Adams Co., Iowa, this 23 day of Nov., 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

And now the taking of depositions is adjourned until 9 o'clock to-morrow morning.

And now, at this time, Nov. 24, 1871, the parties, F. M. Davis, for pl'ff, & C. C. Nourse, for def't, agree in writing that the taking of dep't be adjourned until the 20 of Dec., 1871, at the hour of 1 o'clock p. m., at the same place, at which time it is mutually agreed that the taking of depositions shall be resumed as per written stipulation hereto attached. It is therefore declared that the taking of these depositions be adjourned until the 20 of Dec., 1871, at 1 o'clock p. m., at which time and
549 at this place the taking of depositions in this cause will be resumed.

Nov. 24th, 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

In the circuit court of U. S.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 168. Equity.

In this cause it is stipulated that either party at any time within the time for taking testimony may file with the clerk of the court duly certified copies of any public records, either of Adams County or of any dist. court of the State of Iowa, or of the departments of State, or of the United States, and that so far as the same are competent and relevant as evidence, they may be used as evidence on the trial of this cause the same as though proved to be genuine by deposition or sworn evidence, the certificate of the proper officer to be in due form under seal of such office when he has a seal of office; upon filing such record notice thereof to be given to the other party without unreasonable delay.

Nov. 24, 1871.

550 NOURSE & KAUFFMAN,
Sol. for def't, Adams County.
By FRANK M. DAVIS.

I hereby certify that the within agreement as to the production of record evidence and its admission upon trial was made and filed with me this day, to be certified as part of the proceeding before me to be used in the further progress of this cause, as therein stipulated by agreement of parties, and the same is so hereby certified this 24 of Nov., 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

551 In the circuit court of the United States for the district of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY. } No. 138. Equity.

It is hereby stipu'ated between the parties that the taking of depo-

sitions now in progress before James Widner, special commissioner, be adjourned by mutual agreement until the 20th of December, A. D. 1871, at the hour of one o'clock p. m., at which time the taking of depositions are to be resumed, and it is hereby agreed that either party may at said adjourned time take any deposition desired without further notice before said commissioner.

Quincy, Nov. 24, 1871.

(Signed) NOURSE & KAUFFMAN,
Atty's for def't.
FRANK M. DAVIS,
Att'y for Plaintiff.

I hereby certify that the foregoing is the agreement of parties relative to the adjournment of taking depositions filed this 24 of December, A. D. 1871.

JAMES WIDNER,
Special Examiner & Commis's.

552 In circuit court of U. S., dist. of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT CO.

It is stipulated that the treasurer' cash-book and journal of b'd of supervisors of Adams County, Iowa, show that the American Emigrant Company paid to the county of Adams the sum of two thousand dollars on the swamp-land contract between said county and said company; that the date of said entry is June 19, A. D. 1865; the said payment was in two 7-30 U. S. bonds of one thousand dollars each.

NOURSE & KAUFFMAN,
Att'ys for Deft.
F. M. DAVIS,
Att'y for Plaintiff.

Agreement of parties filed and admitted in evidence, Nov. 24, 1871.
JOHN WIDNER,
Special Commissioner.

553 Now on this 20th day of Dec., 1871, the taking of depositions is resumed as per adjournment of Nov. 23, 1871.

JOHN BIXBY, of lawful age, produced, sworn, and examined, deposes as follows:

Int. 1st. State your name, age, residence, and occupation?

Ans. My name is John Bixby; age, 45 years old; residence Corning, Adams Co., Iowa; occupation, att'y at law & land agent.

Int. 2nd. You may state if you were acquainted with F. C. D. McKay, and describe what relation he sustained toward the American Emigrant Company & in what years you knew him?

Ans. I was acquainted with F. C. D. McKay and he was the general agent of the American Emigrant Company for the State of Iowa. I knew him from the fall of 1862 till his death.

Int. 3. State whether or not you have been in the employ of the American Emigrant Company or acting as their local agent, and give the time?

554 Ans. I have been acting as special agent for the American Emigrant Co. from the time they began to sell land in this county till the present time. I commenced acting as special agent for sale of lands in February, 1865.

Int. 4. State what office you held in Adams County in the year 1862, and how long you held said office and for what years.

Ans. I was clerk of the dist. court, and by virtue of that office clerk of the board of supervisors from the year 1862 to 1868 inclusive.

Int. 5. State whether or not you performed services for the American Emigrant Company in the year 1862 in regard to an election on the swamp-land contract. State what service and what compensation you received therefor.

Ans. I did not perform any service for the American Emigrant Company directly. In the year 1862, by a vote of the board of supervisors, I was required to post notices required by law for an election
555 on the contract, which duties required extra labor, for which extra labor F. C. D. McKay paid me, to the best of my recollection, fifteen dollars. I had to work at night to get them, the notices, ready in time.

Int. 6. Was there a newspaper published in Adams County in September, 1862?

Ans. I think not.

Int. 7. How many civil townships were there in Adams County in the year 1862?

Ans. Nine.

Int. 8. Was there a deed left in your hands as clerk of the dist. court by the board of supervisors to be delivered to the American Emigrant Company for swamp lands? State what became of the deed; give dates and particulars.

Ans. A deed was made by the board of supervisors to the American Emigrant Company Sept. 7, 1863, for Adams County swamp land; that deed remained in my hands until June 19th, 1865, under the
556 terms of the contract, when the stipulated price, $2,000, was paid by the American Emigrant Company to Adams County; the deed then became the property of the American Emigrant Company. I think the deed was recorded about that time; I don't remember whether I delivered the deed at that time or not. I held the deed as the agent of the American Emigrant Company; it was their property as soon as the $2,000 was paid, and if it remained in my hands after that it did so as their property.

Int. 9. How long did you hold the deed after the $2,000 was paid?

Ans. I don't remember; the deed is recorded & they have got it, that is all I remember.

Int. 10. Was there at any time any mortgage executed by the American Emigrant Company to Adams County to secure the conditions of the contract under which the deed was made?

Ans. I don't think there was any mortgage made.

557 Int. 11. Was any such mortgage delivered to you at any time?

Ans. No.

Int. 12. How and by whom and when was the $2,000 paid?

Ans. It was paid on or about the 19th June, 1865, in 7-30 bonds. I think there was two $1,000 bonds; don't know whether the bonds were sent by mail or express or whether they were delivered by some person.

Int. 13. State who acted as attorney for the American Emigrant

Company in a suit of F. M. Davis against Adams County in the dist. court of Page County, Iowa, in the year' 1866 & 1867.

Ans. I think N. B. Moore and C. E. Millard & myself were their attorneys.

Int. 14. State anything you know about the American Emigrant Company or their agent or agents promising or agreeing with the board of supervisors to pay the costs of litigation and the amount of any
558 judgment that might be obtained against the county if they would litigate the claim of F. M. Davis.

Ans. It was always my understanding during the progress of that suit that the American Emigrant Company would pay the cost of it; I don't know that I ever had any guarantee from any officer or agent of the company to that effect, but that was always my understanding of it.

(Answer objected to by def't's att'y as incompetent and immaterial evidence.)

Int. 15. State whether or not the said suit was conducted & controlled by att'ys or agents of the Emigrant Company. State what was done and give particulars.

(Objected by def't's att'y as being leading.)

Ans. I think C. E. Millard presented his bill and was paid by Adams County for that suit. I don't know who paid N. B. Moore, or whether anybody paid him or not. I, myself, have never received anything. I think N. B. Moore was the senior att'y in that case.

559 Int. 16. State what you yourself told the board of supervisors the Emigrant Company would do if they would go on and defend the suit in the name of the county.

(Objected to by def't's att'y as immaterial.)

Ans. I represented to the board that I thought the Emigrant Company would foot the bills of the suit.

Int. 17. When were these representations made?

Ans. Probably at different times during the progress of the suit.

Int. 18. State whether or not they were not made at a special session of the board, March, 1866?

Ans. They might have been, I don't remember.

Int. 19. State what action the Emigrant Company took towards appealing that suit, state what was done and by whom.

(Objected to by def't's att'y as immaterial and incompetent.)

560 Ans. Adams County, def't in the case ordered the appeal taken; I think the clerk's expenses on the appeal case I paid myself, I never knew of the county paying anything. The company never paid me back my money.

Int. 20. State whether or not the American Emigrant Company have ever made any public improvements or built any bridges in Adams County.

Ans. I don't know that they have.

Int. 21st. How many notices of the election on the swamp land contract were posted in Adams County?

Ans. I don't remember.

Examination of witness by defendant including cross-examination:

Int. 1st. State what your special agency for the American Emigrant Company related to and what were your special duties as special agent.

561 Ans. It was for the sale of their lands in this county.

Int. 2. State what amount and number of sales of lands have

been made by you for the company in this county, and whether or not said swamp lands have been sold to actual settlers.

Ans. There has been sold of the swamp lands of Adams County by the American Emigrant Company, 25 different tracts amounting in all to about 1,500 acres. All the parcels except about 7 or 8 that have been sold are improved partly.

Int. 3. State how long since the county authorities have called in question the validity of the American Emigrant Company's title to the swamp lands of the county and the effect of such conduct upon the sale and disposition of their lands in this county since such title has been so questioned.

(Evidence objected to by pl'ff's att'y as asking for the opinion of witness.)

562 Answer. The board of supervisors officially called in question the validity of the contract in April 1869, by passing a resolution and employing legal advice in recovering the contract and recovering indemnity funds; such action had a tendency to stop sales and prevent persons owing the company paying up on their contract; there has been only three sales since such official action.

Int. 4. State if you were present and acting as clerk of the board of supervisors at their Sept. session in 1862, when the board accepted the proposition of McKay for a contract in relation to the swamp lands.

Ans. I was.

Int. 5. Please examine a copy of the contract here produced and attached to plaintiff's petition in this cause, and state if the contract of which this purports to be a copy was read over in the presence and hearing of the board of supervisors at the time it was acted upon

563 and before it was executed by the president of the board.

Ans. This copy as far as I can see is a correct copy and the original was read over to the board before it was acted on by them.

Int. 6. Please examine the record of the board of supervisors at the Sept. session, 1862, and give to the commissioner a true copy of the entries relating to the contract and the order authorizing you as clerk to carry into effect their action on the contract.

Ans. I have examined the record and the following is a copy as entered on the 3*d* day Sept. session, 1862.

Now comes F. C. D. McKay, agent of the Western Emigrant Society, and makes a proposition to purchase the swamp land interest of Adams County for the sum of $2,000. On motion the board accepted the proposition and ordered that at the next October election there be a poll opened in the county submitting the contract to the people. This is on page 95 of the record. On page 97 of the record same day's proceedings is the following:

564 On motion the clerk of the board is authorized and required to issue the proper election notices for the October election for all county officers whose terms will have expired, and to fill vacancys which may occur, also to carry into effect the vote of this board in relation to the sale of swamp lands. On motion the minutes were read and approved.

(Signed) JOHN BARNETT,
Chairman Board Supervisors.

Int. 7th. Please examine the same record on pages 98 & 99, and state if it contains a canvass of the votes at the general election in October,

1862, and, if so, give so much of the entry as relates to the canvass of the vote on the swamp land contract?

Ans. There is a record of the canvass of votes of October, 1862, on pages 98 & 99, canvass had Oct. 20th, 1862; on page 99 the following entry is made with regard to the swamp land contract, to wit, there were 241 votes cast on the swamp land contract of which 161 were for the contract, and 80 were against the contract, the said contract is
565 therefore declared valid and of full force and binding on the parties thereto.

Int. 9th. State to the best of your recollection what was done in relation to posting copies of contract & notices of election prior to the Oct. election in 1862?

Ans. Copies of the contract and notices were posted as required by law as I understood it and under directions of F. C. D. McKay. I don't remember the number of notices that were posted in the county.

(Answer objected to by pl'ff's att'y because it states an understanding and not facts.)

Int. 10th. State if notices and copies of the contract were posted in each civil township of the county?

Ans. They were.

Int. 11. State whether or not you examined the law at the time and were guarded by the direction of the (statute) (?) in making out and posting the contract and notices.

566 Ans. I don't know that I did examine the law; I was guarded by and trusted to M'r McKay; he paid me for the extra work.

Int. 12. State whether or not the McKay referred to is dead?

Ans. He is.

Int. 13. State what was said, if anything, between McKay & the members of the board at the time the contract was approved as to whether it should embrace all the swamp land interest of the county, and as to whether the $2,000 was the consideration for the entire interest of the county in her swamp land claim upon the general government.

Ans. The contract as understood by the board conveyed the entire swamp land interest of the county for $2,000. The question was talked up between the board and McKay at the meeting.

Int. 14. State whether or not in your conversations with the citi
567 zens of Adams County at and before the election you ever mis represented the terms or conditions of this contract with reference to that or any other matter contained in it.

(Objected to by pl'ff's att'y as leading and asks the witness for a legal conclusion and not for facts.)

Ans. No.

Int. 15. State what you did say at such times as you may have spoken of it at and prior to the election as to what the $2,000 was to be paid for.

Ans. I don't recollect any particular words that I used in any conversations that I may have had. I stated facts as I understood them at the time, that the $2,000 was to pay for the entire swamp land interest of the county.

Int. 16. State what McKay said to the board, if anything at the time the contract was adopted by the board about the company setting out forest trees or fruit trees on each 40 acres of the swamp land.

568 Ans. I don't remember that he said anything more than what is embodied in the contract.

Int. 17th. State if you ever represented to the people of Adams County or any of them, at or prior to the election that the contract provided

that the company if they got the land were to set out forest trees or fruit trees on each tract or anything to that effect.

(Objected to by pl'ff's att'y as leading.)

Ans. No, sir.

Int. 18th. State what, if anything, there was about the company contracting in relation to forest trees or fruit trees or what character of contract had any provisions thereto.

Ans. The time contracts made by the American Emigrant Company with the purchasers of their lands contained a provision requiring the planting and proper care of a certain amount of timber.

569 Int. 19. How long after this contract made with the American Emigrant Company before any such contracts as last referred to were made?

Ans. About two years and four months.

Int. 20. State if at the time McKay was before the board he exhibited to the members of the board any printed circular relating to the condition of their swamp-land claims; and, if so, what that circular was, and whether or not a circular had before that time been in possession of the board or any of the county officers and state all you know about it.

Ans. I don't think McKay exhibited any printed circular whatever, to the board. I have no recollection of any. There was a circular in my hands as clerk of the district court. The idea conveyed in that circular was that all swamp-lands that had not been patented would

570 have to be re-examined, new proofs furnished as to the swampy character of the land, proving the overflow, and giving instructions as to such re-examination. The idea that the board of supervisors obtained from that circular was that the county had obtained all the swamp land she could ever get. That circular was here before McKay was and the board of supervisors understood the contents of it before McKay made his statement. Said circular was from the Department of the Interior. That circular was on file when I left the office among the swamp-land papers.

Int. 21. State if the Emigrant Company had anything to do in sending that circular into the county, and about how long you had that circular before you ever saw any of the agents of the Emigrant Company, or knew there was such an organization; and also state if the document purported to be mailed from Washington, D. C., as an official document.

Ans. I don't know how long it was before the vote was taken

571 or before McKay came here that I received that document, but it was previous to that time. I never knew of the existence of the American Emigrant Company until McKay came here; said circular was received as an official document and filed as such.

Int. 22. State if you were present at the Sept. session of the board of supervisors of 1865, when they took action upon the claim presented by F. M. Davis and allowed him 40 per cent. on all the funds or scrip obtained by the company on proofs for swamp-lands; if so, state what representations said Davis made to the board at that time and state what documents he read or pretended to read to said board in sustaining said claim.

(Objected to by pl'ff's att'y as irrelevant to any issue in this suit and incompetent and secondary evidence.)

Ans. I was present at said meeting acting as clerk. There was a resolution passed at said meeting of the board as referred to in said question; said resolution was passed upon the representations

572 of M'r Davis that he had a contract with W'm A. Shields, county judge by the terms, of which he was to receive 40 per cent. on all

funds or scrip obtained by virtue of proofs furnished by said Davis. He presented the writing or contract signed by Judge Shields to sustain said claim. M'r Davise's claim and the said contract was filed and afterwards it was ascertained upon examination that no compensation was mentioned in said article signed by Judge Shields, and afterwards at the June session of 1866, said resolution referred to in the question was rescinded as recorded on page 41 of the record.

Int. 23. Please give to the commissioner, from the record now before you, a correct copy of said resolution, on page 41 of the record above refer'ed to.

Ans.

June session, first day, June 4th, 1866.

Now at this time the following is presented:

Whereas at the September session of 1865 of the board of su-
573 pervisors of Adams County, Iowa, a resolution was adopted certifying (40) forty per cent. of swamp-land funds and scrip as due F. M. Davis, from the swamp-land fund and scrip, and by virtue of a contract existing between said county and the American Emigrant Co., said Em'gr't Co. became obligated to pay said amount to said Davis; and whereas such resolution was passed upon the representation of said Davis as to the provisions of the pretended contract he had with Adams county, and under a mistake of the facts of the case, it appearing that said Davis had no contract with Adams County for such sum of money for any such service; therefore, Resolved, That the resolution above referred to be, and the same is hereby, rescinded; and, further, that there is no specific sum due said Davis, neither from Adams County nor said emigrant company, for any service since, concerning the swamp lands or swamp-land funds of said company.

The question now coming on the adoption of the above resolu-
574 tion, the yeas and nays being called, the vote stood as follows: Yeas, Wesley Homan, Samuel Hardesty, O. B. Case, A. White, R. H. Schooling, H. L. Harlow, J. M. Russell, J. W. Morris, B. O. Stephenson. Nays, none.

The resolution is therefore declared unanimously adopted.

This is a true copy of the record.

Int. 24. State whether or not at the time the contract was made between McKay and the board anything was said by McKay about Davis having any contract with the county judge, or any claim against the county for 40 per cent. of the scrip or lands procured on proofs furnished by him; and state all that was said at that time on the subject of Davis having any claims on the swamp lands or swamp-land funds.

Ans. Previous to the adoption of this contract by the board there had been a settlement made with M'r Davis, under a contract he had with D'r Tripet, as county judge, by which settlement Davis was
575 to receive some 500 or 600 acres of swamp land, and received scrip for the same. These lands had not all been located by Davis at that time, and his claim to such lands was specially exempted from the sale to the company in the contract; no other contract was mentioned to McKay, nor was the existence of any other contract between the county and Davis known to me at that time, nor was the existence of any other contract known to any member of the board to my knowledge. The scrip so issued to Davis was all taken up and cancelled and located on swamp lands in the county, while I was clerk of

the board of supervisors. All the swamp lands which had been patented to the county at the date of the contract were included in the deed to the American Emigrant Company, and the lands previously sold by the county, and the lands to which Davis had a claim by virtue of said settlement, were exempted from the operation of said deed.

576 Int. 25. State if you were present and heard M'r Davis testify on the trial of the cause between himself and Adams County; and if so, state what statement he made in regard to the services and number of days' work he had performed in making selections and proofs under his said contract with Judge Shields, for which he made a claim in that controversy.

Ans. I was present at the trial, and heard M'r Davis testify. I don't remember that he testified as to the number of days' work that he performed.

Int. 26. State if any other witnesses were produced on that trial; and, if so, state what evidence they gave as to the services performed by Davis in making proof of swamp land selections for Adams County; state fully all that was proved with regard to services performed by Davis or persons employed by him.

(Objected to by pl'ff's att'y for irrelevancy, incompetency, and
577 hearsay evidence.)

Ans. Other witnesses were produced by the plaintiff to prove the amount of labor performed by Davis, and there was proved some 10 or 12 days' field-work, to the best of my recollection.

Int. 27. State if any other services were proved to be performed except the field-work.

(Objected to by pl'ff for same as last.)

Ans. Davis testified to certain amount of office work; don't recollect the amount.

Int. 28. State if ever any bill of exceptions was signed or certified to by the court containing the evidence in said cause.

Ans. I don't know that there was. The evidence was all written down by a sworn clerk.

Int. 29. Did either of the attorneys for the defendant in said cause make any argument or speech to the jury in said cause?

(Objected to by pl'ff, same as above.)

578 Ans. They did not.

And now the taking of depositions is adjourned until 8 o'clock tomorrow morning.

DEC. 21, 1871.

Present, same as yesterday. Examination of Bixby resumed.

Int. 30. Please examine circular here produced, headed "Office of the American Emigrant Company, New York, July 24, 1862", and signed S. P. Lyman, secretary, and state when you first received said circular, and whether or not any such document was before the board of supervisors, or the people of Adams County, at or before the election upon the swamp-land contract.

Ans. I have no recollection as to the time I received that exactly. There was no circular of that kind before the board at the time McKay was here. I have no knowledge of a circular of that kind being before the people before the election. To the best of my knowledge that
579 circular was received after the election by me, and my impression is that that is the only copy received.

Int. 31st. State whose handwriting that is on the back of the circular?

Ans. The writing at the top, to wit, "The American Emigrant Company circular" is my own; I cannot identify the remainder; don't know whose it is; it is not mine.

Cross-examination by plaintiff of the witness as defendant's witness and re-examined as his own witness:

Int. 1st. How long after election was it that circular was received?

Ans. I can't tell; have no recollection about it; to the best of my recollection, it was not here before election, but can't say how long after when it was received. I think if it had been here before election, I would recollect something about it.

580 Int. 2. Why do you think you would have remembered if it had been here before election?

Ans. I believed at the time it was the best thing the county could do to sell the land, to accept the contract, and if that circular had been here, it would have been so strong an argument in favor of accepting the contract, and would have been used in such a manner, that I don't think it possible I would have forgot it. I was free to express my opinion to private individuals in regard to the acceptance of the contract, and the idea is, I did not have any such things to use as an argument and I was using all the arguments I had in favor of accepting the contract.

Int. 3. State what arguments you did use before the people to induce them to accept that contract that induces you to remember that this circular is not one of the arguments?

581 Ans. The main argument that I used was that we was getting a fair compensation for the land; the amount of pattented land which the county had at that time was supposed to be all the county would ever receive from the instructions of the circular from the Department of the Interior on file in the office. Another reason was that the county would be exempted from all expenses of drainage by accepting the contract. Another argument was it would have a tendency to settle part of the county which would not otherwise be settled. I know there was never an argument used in favor of accepting the contract as embodied in the said circular regarding any amount of fruit trees to be planted on said land nor for the company furnishing necessary seed for crops, an equal amount to be returned from the crop, nor timber seed gratis, nor fruit settings at half the nursery prices, as stated in said circular.

Int. 4. How much swamp-land did the county own at that time that was pattented, that would inure to the Emigrant Company if the contract was adopted?

582 Ans. There was supposed to be about 2,000 acres.

Int. 5. Did you tell the people that $2,000 was a fair compensation for 2,000 acres of land and a claim on the United States for a large amount of other lands and several thousand dollars in money?

(Objected to by def'ts att'y as immaterial).

Ans. No. By the circular referred to as being on file at and before McKay was here from the Department of the Interior, it was understood by me that the lands that had already been pattented to the county was all she would ever get, either in lands or in scrip or indemnity; that was my understanding, and probably I made such representations to the people as my own private opinion.

Int. 6. In speaking to the people about the contract, did you say any-

thing about this indemnity claim against the United States? State what you did say.

583 Ans. In all my talk with the people in regard to that contract there were no representations made different than what were embodied in the contract, that if the contract was accepted it would convey to the American Emigrant Company the entire land, funds and claim of the county to swamp-land or swamp-land interest.

Int. 7. Did you represent that the fund & claim was of no value and that the real contract was for the sale of 2,000 acres of land, and that was the substance of all of it?

Ans. It was my understanding that the fund and claim was of no value under the instructions of the circular from the Department of the Interior heretofore referred to, and I probably made such representations as my own opinion.

Int. 8. Did you, at that time, know anything about proofs being taken to recover the indemnity money?

Ans. I knew that M'r Davis was doing some work relating to

584 the swamp-land business somewhere in the fall of 1861.

Int. 9. Did you or the board of supervisors or the people have any knowledge of the condition of the indemnity claim at the time of the contract in Sept. & Oct., 1862?

Ans. I had no actual knowledge of the condition of the claim other than as has been stated heretofore from that circular. I don't know how much the board of supervisors or the people knew on the subject.

Int. 10. Did M'r McKay say anything about the condition of that claim to the board?

Ans. I don't think he did.

Int. 11. Did M'r McKay say anything about buying lands and claims in other counties adjoining this?

Ans. Yes, he did; he had at that time, he said, purchased the swamp-land interest of Page County; don't think he had at that time made any other purchases.

585 Int. 12. Was the circular from the department written or printed?

Ans. It was a printed circular from the Department of the Interior. I don't remember the signature of the Secretary or date.

Int. 13. Did you show the circular to other parties?

Ans. The board of supervisors had access to it, and I think they read it. Any person could have seen that circular, or any other circular, if they wanted to.

Int. 14. What became of that circular?

Ans. I don't know where it is. When I delivered up the office to my successor, to the best of my knowledge, I left all papers belonging to the office in the office.

Int. 15. Were you not informed as county clerk by a M'r Cramer, special agent of Adams County at Washington City, in June,

586 1862, that the indemnity money claimed by Adams County would soon be paid?

(Objected to by def'ts' att'y as immaterial.)

Ans. I have no recollection of ever having received such notice. I have since seen a notice in the possession of M'r Davis of that kind, and addressed to the clerk of the district court or the swamp land agent of the county; and if such letter ever came into my possession, it was handed to M'r Davis as such agent. At that time I did not have any clear understanding of the condition of the swamp land funds or claim.

Int. 16. Are you certain the letter was addressed to the clerk of the district court or swamp land agent?

Ans. I don't know how the envelope might have been directed, but I am quite certain that the letter was so commenced at any rate. It was handed to M'r Davis as the proper person to receive it if it came into my hands at all, without me comprehending the contents.

587 Int. 17. State particularly the name of each person to whom the 25 tracts of land have been sold. Give the date of sale, amount of land sold, the price for which sold, and the kind and quantity of improvement on each tract, and the date of the improvement.

(Objected to by def'ts' att'y as immaterial.)

Ans. On Feb. 16th, 1865, I sold the S. W. q'r, S. 10, T. 71, R. 35, to J. J. Romang. The improvements were commenced on that tract, I think, within six months. There are now two farm-houses on that tract. I think the land sold for $2.50 per acre. Don't know the amount under cultivation on the tract.

No. 2. On May 30th, 1865, I sold the N.W. N. E. sec. 2, T. 71, R. 34, to Mary Jane Day. No improvements on the tract except some seed for timber-trees planted; no plowing on it.

No. 3. On the same date, May 30th, 1865, I sold to J. H. Lager the N. E. ¼ S. W. ¼ sec. 30, T. 72, R. 35—improved; house built on it that fall.

588 No. 4. June 30th, 1865, sold the S. E. N. E. sec. 10, T. 71, R. 35, to D. M. Parcher. Improved within one year from date of sale.

No. 5. July 1st, 1865, sold the N.W. q'r sec. 30, T. 72, R. 35, to Adam Wise. Improvements commenced at once.

No. 6. Nov. 16th, 1865, sold to W'm A. Cole the S. ½ N.W. sec. 36, T. 72, R. 34. Don't know when improvements were commenced. Farm-house on it now; 40 or 50 acres in cultivation at the present time. My impression is that Cole did some draining on the land the year after purchasing. The breaking has been done and house built within two years.

No. 7. Nov. 20th, 1865, sold the N.W. N. E. S. 28, T. 73, R. 24, to John Johnson. Don't know anything about improvements on that tract.

No. 8. March 19th, 1866, sold S. ½ N. E. ¼ 30, 72, 35, to John Gourley. Don't know anything of improvements. John Gourley bought the Sagar (?) tract cornering with this, and occupied it as a homestead, and always considered this tract to be part of his farm.

589 9th. March 28th, 1866, sold E. ½ S. E. 20, 72, 35, to Emery Coleman. Improvements commenced next spring; still occupied as a farm.

10th. Feb. 12th, 1867, sold S.W. ¼ S. E. ¼, 30, 72, 35, to Job Davis. Improved within a year from that date; still occupied as a farm.

11th. In 1867 sold N. E. ¼ N.W. ¼ 18, 71, 34, to W. A. Ballard. Not improved that I know of.

12th. In 1867 sold to A. M. Campbell S. E. ¼ S.W. ¼ 20, 71, 35. Improved within a year after.

13th. In 1867 sold to W'm Murphy E. ½ N.W. ¼ & N.W. ¼ S. E. ¼ 30, 71, 35. Don't know to personal knowledge, but have understood 'twas improved. Some breaking & a field on some part of the 120 acres was sold to him by J. S. Manghlin.

14th. In same year G. Pickett bought of Manghlin S. E. ¼ S.W. ¼ 14, 73, 34. Improved; don't know date. Manghlin was an agent of Emigrant Company, and sold the land as such for the company.

15th. July 27th, 1867, sold the N. W. ¼ N. E. ¼, sec. 30, T. 72, R.
590 35, to W. H. Bean. There are some improvements on that tract; don't know how much, and don't know when improved. There is a house on it.

No. 16. Sept. 21, 1867, sold the S. E. S. W. sec. 30, T. 72, R. 35, to Jacob Hinton. Improved within a few months from date of sale.

No. 17. Feb. 28th, 1868, sold to Mark Homan the N. E. N. E. 30, 72, 35. Improved within short time after sale.

No. 18. Feb. 28th, 1868, sold to G. D. Lerte N.W. N. W. 32, 73, 34. Improved within a year from date of sale.

No. 19. Some time in 1868 sold to Emery Coleman N. W. S. E. 20, 72, 35. Don't know whether improved or not. M'r Coleman has an improved farm adjoining the tract.

No. 20. Some time in 1868 sold S. ½ S. W. 20, 72, 35, to O. A. Pease. Some breaking done within a year from date of sale. The breaking is a hedge-row a rod wide around the tract.

No. 21. Sept. 11th, 1868, sold to David Johnson the N. E. N. E. sec. 28, T. 73, R. 34. No improvements done on that until within one year.

No. 22. Jan'y 29, 1869, sold to Isaiah White W. ½ N. E. & S. E. N.W. sec. 30, T. 71, R. 35. Some breaking done on that tract in the
591 year 1870; don't know how much.

No. 23. Some time in 1869, sold S. E. N. E. sec. 23, T. 72, R. 33, to Jacob Webber; improved; railroad depot on it; not cultivated.

No. 24. April 24, 1870, sold N. E. N. E. sec. 6, 73, 33, to J. N. Ramsey; no improvement on land; not fit for cultivation.

No. 25. March 22, 1871, sold Samuel Day S. E. S. E. sec. 5, T. 71, R. 34; no improvement that I know of.

The general price for the first year or two was $2.50 per acre, since higher.

Int. 18. How many of the above-named persons did the Emigrant Company send into the county?

Ans. I don't know.

Int. 19. Do you know whether any of them were sent by the Emigrant Company?

Ans. No, I don't; it was no uncommon occurrence, & within the last five years, for persons to call on me with letters from the American Emigrant Company for the purpose of purchasing swamp-lands.
592 To the best of my recollection no person coming with such letters of introduction have purchased lands of the company within the last five years, and I don't know that ever any person coming from the Emigrant Company with such letters of introduction have purchased any of their lands.

Int. 20. Is there any other record in the minute book of the board of supervisors relating to the submission of the contract to the people of the county, at the Oct. election of 1862, and the canvass of the votes thereon, except what you have previously given in this deposition in answer to interrogatory Nos. 6 & 7 of def'ts' examination?

Ans. I don't think there is any other entry except what is shown those answers.

Int. 21. Who posted the copies of the contracts in the defferent townships to which you refer'ed?

Ans. I posted part of them myself. Don't remember who posted the remainder.

593 Int. 22. When, where, and how many did you post?

Ans. I don't remember. I posted the notices in Colony & Carl. Don't remember how many or at what places, with the exception of one

in Carl Township, which I attached to a guide-post near the residence of John Henrys, in Carl Township. I don't remember distinctly, but of course there was one posted on the court-house door. Don't know whether I posted it myself, or some one else.

Int. 23. Did the sheriff of Adams County, or any other person, post notices or copies of the contract in any other township or townships?

Ans. I caused the copies of the contract to be posted in each township in the county. What I did not post myself I employed others to do, and was satisfied that it was done. Don't remember who those persons were.

Int. 24. How many notices were posted in Douglas Township?

Ans. I don't remember.

Int. 25. Do you know that any notice or copy of the contract
594 was posted in Douglas Township, or any other except as you have stated above?

Ans. The board of supervisors ordered me to post those notices as required by law. That duty was performed to my satisfaction at the time, that is, I was satisfied at the time that that duty was performed.

Int. 26. Who wrote the resolution passed at the June session, 1866, as you have stated, to rescind the former resolution allowing Davis'es claim, and at whose request was it passed?

(Objected to by def't's att'y as immaterial.)

Ans. I don't remember who wrote it, or that any person requested it particularly.

Int. 27. Was it not passed or adopted at the request or recom'endation of the American Emigrant Company or their agent or attorney, as a means of defending in a suit then pending in the dist. court?

595 Ans. I don't remember that it was or was not; have no recollection in regard to it.

Int. 28. On the passage of the resolution allowing the claim in 1865, did you not advise the company or inform them of the passage of that resolution?

Ans. I don't remember that I did. I might have done so. Very probable I did as their agent. It would be my duty to do so.

Int. 29. Do you know anything of their refusing to pay the Davis claim in 1865, or before the passage of the June resolution in 1866.

Ans. I have no recollection of any such refusal, or of any demand being made.

Int. 30. State whether or not N. B. Moore was acting as attorney for the American Emigrant Company in the Page County dist. court trial and subsequent thereto in the appeal.

Ans. My understanding during the trial was that N. B. Moore was acting in the interest of the American Emigrant Company.

596 (Objected to by def't's att'y as immaterial & incompetent.)

Int. 31. State what acts the American Emigrant Company did concerning that suit from the time it was begun until it was finally determined in the Supreme Court?

Ans. I don't know as they performed any act. They used to write to me frequently from Des Moines enquiring how the suit was going, asking information in regard to evidence and so on.

Re-examination by def'ts:

Int. 1st. Please set out the record of the board of supervisors on page 178 relating to the swamp-land contract.

(Objected to by pl't'ff as incompetent because a change of contract & not submitted to a vote of the people.)

Ans. I herewith furnish a copy of said entry hereto attached marked Exhibit A to the answer.

Int. 2. State what you mean by your talks to the people of
597 Adams County pending the election and whether you made any public speeches and how many, and whether on your own account or as agent for the company?

Ans. I mean any conversations I might have had with the people of the county, either public or privately. To the best of my recollection, I made but one public speech; that was at Queen City, where I answered Daniel Richey, who made a speech against the adoption of the contract. I was not an agent for the Emigrant Company.

EXHIBIT A.—*Bixby's deposition.*

SEPT. 7, 1864.

On motion, the following modification of the contract between the county and the American Emigrant Company is agreed to and adopted, and the chairman of the board and clerk sign the same in behalf of the board.

It is agreed between the board of supervisors of Adams County
598 and the American Emigrant Company that the part of the original contract between them which provides that such lands as are fit for settlement, sold to said company, should be settled in three, five, and eight years, be changed, and that it be as follows: That said company shall cause to come into said county as many persons as shall become actual settlers as they would have to bring in order to fulfill said contract as it was previous to this change; but that such persons may settle either on the lands so sold to said company, or on other lands in said county, and that such settlement shall be deemed to be in fulfillment of said contract, the same as though they all settled on lands so sold to said company.

Dated Sept. 7, 1864.

By order of the board.

JOHN BIXBY, *Clerk.*

B. O. STEPHENSON, *Chairman.*
THE AMERICAN EMIGRANT COMPANY,
By F. C. D. MCKAY.

Int. 3. State for what services you have ever been employed or paid by the Emigrant Company.

599 Ans. Other than my regular commissions on the sale of lands, I have received no compensation for any service, except as before stated, to wit, fifteen dollars for writing copies of the contract.

Int. 4th. Were you ever employed by the company or any of its agents to electioneer or use your influence for the adoption of the contract at that election, or make any speeches, representations in relation thereto?

Ans. No.

Re-examined by pl'ff:

Int. 1st. What commission do you get on the sale of land for the company; at what time is the commission payable, and when was the agreement or promise made that you were to have the agency?

Ans. On the first sales I got 25 cents per acre; since then don't remember when the change was made. I get $10 for a 40; $30 for 160 acres; it averages about 20 to 25 cents per acre. I first received

600 my agency a few days previous to Feb. 16, 1865; never had an unconditional promise until about that time.

(Signed) JOHN BIXBY.

Fees claimed: 4 days & 6 miles, $4.60.

Subscribed and sworn to by John Bixby, in my presence and before me this 21st day of Dec., 1871.

JAMES WIDNER,
Special Commissioner and Examiner of U. S. Cir. Court.

I hereby certify that the foregoing deposition is the true deposition of John Bixby which was subscribed and sworn by the said witness, before me and in my presence, at Quincy, Adams Co., Iowa, this 21st day of Dec., 1871.

JA'S WIDNER,
Special Ex. & Commissioner.

ALFRED WHITE, sworn, deposes & says as follows:

Int. 1st. State your name, age & place of residence.

Ans. A. White; age, 49 years; reside in Jasper T'p, Adams County; resided in this county 12 years; lived in Jasper T'p the last
601 year; resided previously in Nodaway Township.

Int. 2d. What do you know about a vote of the people of Adams County on a contract for sale of swamp-lands in the year 1862; & what representations were made to the people in relation to the contract at that time?

(Objected to as incompetent and immaterial by def't.)

Ans. I know there was a vote; I know there was inducements throwed out to get the people to sell, and some of the inducements was they was to settle up the land in five years; and I believe there was some talk of so much timber to be put on each piece; I don't know the amount of land the county was selling; I won't be positive about the price; don't remember the No. of dollars they were to give.

Int. 3. State if you ever saw a copy of the contract.

Ans. As near as I can recollect, I never saw one.

602 Int. 4. How near the place the election was held in Nodaway Township at the time of the election did you reside?

Ans. About a quarter of a mile.

Int. 5. Were you at the election in 1862—the general election?

Ans. I was.

Int. 6th. Was there any copy of the contract posted at the schoolhouse at the day of the election, or at any time previous?

Ans. I didn't see any. I think if there had been one there, I would have seen it.

Int. 7th. Did you hear anybody say that they had seen one posted?

Ans. No, sir; not that I remember of.

Int. 8. How did the people know what the contract contained, or what they were voting on?

Ans. Through general rumor, I believe; as far as I knowed, that is the way I got it.

603 Int. 9. Do you know of the emigrant co. sending anybody into the county, or ditching or draining any of the land?

Ans. No, sir; I don't.

Int. 10th. What reason did the people assign for voting for the contract?

(Objected to by def't as immaterial.)

Ans. I don't know as the people assigned any particular reason. The reason why was they would have it settled up in five years, and taxation would come from it to the county sooner than it would otherwise.

Cross-examination:

Int. 1st. Did you vote for or against the contract?

Ans. I voted against it.

(Signed) ALFRED WHITE.

Claims: 1 day, & 7 miles' travel, $1.70.

Subscribed to by A. White in my presence, and by him sworn to before me this 21st day of Dec., 1871.

JAMES WIDNER,
Special Commissioner & Examiner in Chancery.

604 I hereby certify that the foregoing is the true deposition of Alfred White, which was sworn to and subscribed by the said witness before me, and in my presence, at Quincy, Adams Co., Iowa, this 21st day of Dec., 1871.

JA'S WIDNER,
Special Com. & Examiner.

ISAAC CROW, being sworn, deposes and says:

Int. 1st. What is your name, age, and place of residence?

Ans. Isaac Crow; age, 42 years; reside Jasper Township, Adams Co., Iowa. Have lived in Adams Co. 12 years. I lived in Quincy Township in 1862.

Int. 2. Were you at place of holding the gen'l election of 1862 at Jasper T'p?

Ans. I was.

Int. 3*td*. What was said at that election about the contract for sale of swamp lands, & by whom?

(Objected to by def't as immaterial.)

Ans. I believe Hiram Harlow, a member of the board of super-
605 visors, represented to the people at the election that the best thing the county could do with the swamp land' was to sell them. I don't think he told the people what the contract was. Don't think he spoke of the price. Think he said there was about 2,000 acres. The county was going to sell to the American Emigrant Company. He said he thought the co. could do better at that time to sell the lands to the emigrant company than they could to hold it. I think his representations to the people induced the people to vote for it more than they would have done.

Int. 4. Did he tell the people what the emigrant co. was going to do with the land?

Ans. Well, that they would settle the lands up in a short time, and that it would be better for the county.

Int. 5. Did he represent that there was a lot of money back in Washington?

Ans. He represented that to the people, but that the county
606 never would get it, & it would never do them any good.

Int. 6th. Did he tell the people where he got his authority for the statement?

(Objected to by def't as immaterial.)

Ans. I think he represented he got it from the agent of the company, McKay.

Int. 7th. How did the people get information as to what was in the contract, at that election?

Ans. I don't think they had any information, only just what they got from him, Harlow.

Int. 8. Was there any copy of the contract with the company posted up in the county at the time of the election, or previous thereto?

Ans. I was at the election all day, and never saw a copy posted up either then, or in the township or in the county, either then or at any time, not that I can recollect.

607 Int. 9. Did you at that time, or at any time since, hear anybody say that they had ever seen a copy of the contract posted up at any time or place?

Ans. I never did, that I recollect of.

Int. 10. What inducement was held out to the people to vote for the swamp-land contract, by Harlow?

(Objected to by def't as immaterial.)

Ans. The inducement was that it was best to sell the land.

Int. 11. Did the people vote for the contract at that election on Harlow's representations?

(Objected to by def't as immaterial.)

Ans. Yes, sir; I think they did.

Int. 12. How far did you live from the court-house in 1862, & did you ever see a copy of the contract posted at the court-house door?

Ans. I lived at that time about a quarter of a mile from the court-house. I don't think I ever saw a copy of the contract posted at the court-house door.

608 Int. 13. State if you were present at the meeting of the board when contract was made, and what representations McKay made to the board about the swamp-land indemnity claims.

Ans. I was present, but I don't know as I remember what representations he did make.

Int. 14. State what representations he made about settling, reclaiming, or improvements to be made on the land.

Ans. I know he stated to the board that the lands should all be settled up, I think in five years. I don't remember what improvements were to be put on. It was to be settlers sent in here from other places.

Cross-examination:

Cross-int. 1. Did you vote for the contract at the election?

Ans. I voted for it.

(Signed) ISAAC CROW.

Fees: one day, 6 miles; claimed $1.60.

Subscribed by Isaac Crow in my presence, and sworn to him
609 before me & in my presence, this 21st day of Dec., 1871.

JAMES WIDNER,
Commissioner of U. S. Cir. Court and Special Examiner in Chancery.

I hereby certify that the foregoing is the true deposition of Isaac Crow, which was subscribed and sworn to by the said witness, before me, and in my presence, at Quincy, Adams County, this 21st day of Dec., 1871.

JAMES WIDNER,
Special Examiner & Commissioner.

J. F. POWELL, produced, sworn, and examined, deposes and says as follows:

Int. 1st. State your name, age, place of residence, and occupation.

Ans. My name is J. F. Powell; age 52 years; residence, Corning, Adams Co., Iowa; occupation, carpenter.

Int. 2. How long have you been living in Adams Co.; where did you live in 1862, and what office did you hold?

Ans. I have lived in Adams Co. 19 years; was a resident of
610 Quincy in 1862, and held the office of sheriff of Adams County at that time.

Int. 3. State what you know about the submission to the people of Adams County of a contract to sell swamp-lands in the year 1862?

Ans. I recollect there was a contract submitted for the people to vote upon.

Int. 4th. State whether or not you posted notices of election of officers at the general election of 1862. State who issued the notices, & from whom you got them.

Ans. I did. I received an order from the clerk of the dist. court to post notices in accordance with that order. I wrote notices and posted them according to law.

Int. 5th. State whether or not the clerk gave you any copy of the swamp-land contract to post, and if so, what was done with it.

611 Answer. I have no recollection of receiving a single copy of the contract to post that year.

Int. 6. State whether you know or have any knowledge of an' copies of the contract being posted in the county.

Ans. I have not now any knowledge of any such contract being posted in the county.

Int. 7. How far did you reside from the court-house, and what were your means of seeing or knowing whether a copy was posted on the court-housedoor?

Ans. I was not to exceed 8 rod from the court-house. I was at the court-house frequently; being sheriff was there very often; some days three or four times; some days not at all.

Int. 8th. You may state whether or not there was on the day of election, or previous thereto, any copy of the contract posted at the
612 court-house door, or about the court-house in any public place?

Ans. I have no recollection now of seeing any copy of contract posted as is customary to post notices for public inspection.

Int. 9. State whether or not you ever seen any copy of the contract prior to the election; if so, when & where?

Ans. I can't tell whether I did or not; that is, whether it was before or after the election. I saw it in the clerk's office. I saw it in Bixby's, the clerk's, office.

Int. 10. State whether or not you ever heard anybody say they ever seen a copy prior to the election.

Ans. I think not.

Int. 11. Was there any paper published in Adams County in Sept. or Oct., 1862?

Ans. I don't think there was.

613 Int. 12th. What means had the people of Adams County of knowing what was in that contract?

(Objected to by def't as calling for the opinion of witness.)

Ans. I believe the principal means was through the supervisors of e different townships.

Int. 13. Were you at the election in Quincy T'p, Adams Co., when the contract was voted on?

Ans. I was.

Int. 14. Were you acquainted with what the people of the county generally said about that contract at the time and prior to the election; and if so, what was it?

(Objected to by def't as immaterial and incompetent.)

Ans. I had an expression from persons in all parts of the county, and was inter'ogated by them in ref*f*erence to the sale of the swamp-
614 land of Adams County. The general impression was, it was the best thing we could do was to sell as represented to them by the supervisors of their different townships.

Int. 15. What was the general talk that they were selling, and what were they getting by the contract?

(Objected to by def't as immaterial & irrelevant.)

Ans. They were selling what they regarded an uncertainty for a certainty.

Int. 16. What were the representations made to the people with regard to back claims on the general government prior to the election?

(Objected to by def't; same reason as the last interrogatory.)

Ans. It was represented to the people of Adams County that all claim upon the general government was exceedingly doubtful for
615 any other swamp-land than they had already got, or any swamp-land indemnity money.

Int. 17. Was there any representations made with regard to indemnity proofs; and, if so, what were they, & by whom made?

(Objected to by deft.; same reason as the last int.)

Ans. There was representations made to the board of supervisors by M'r McKay, by M'r Bixby to the people, and by J. F. Powell. It was represented to the board by M'r McKay that the proofs which M'r Davis took, that we had relied on, had failed to accomplish the object for which they were intended. M'r Bixby represented to the people that he thought it very uncertain that we should ever obtain any swamp-land or indemnity money; that is, that we would never get any more than we had got already. I represented the same to the people, as I was inter'ogated frequently by the people of the county.

616 Int. 18. How many times was McKay here prior to the election?

Ans. I believe I saw him only twice.

Int. 19. What did McKay say to the board about what they would do with the land, and about the kind of settlers, and the improvements to be made on the land?

(Objected to as immaterial.)

Ans. M'r McKay represented to the board in my hearing that the company intended to reclaim the land, put actual settlers upon the land. He represented that they had an agency in Europe, so as to secure settlers to be sent in here, and that they would make valuable improvements on the land, and that the increased taxes by reason of the improvements would be worth to the county more than to retain the land. He represented that he intended to have each settler plant a grove, and
617 he enlarged upon the utility of having the farmers of the county plant groves. Don't recollect anything being said about fruit-trees. The sum-total to be realized from the emigrant co. was about two thousand dollars, but I can't recollect the No. of acres or the price per acre.

Cross-examination:

Cross-int. 1. Upon what did you base your opinion & representations that you made before the election, that the county would never get anything more on her swamp-land claim?

Ans. My conclusions were formed from the reading of a decision of the Secretary of the Interior. I believe it was specifying what proofs were necessary to constitute a valid or sufficient proofs of swamp-land under the specifications of that decision. I became satisfied we never would get a foot more of swamp lands.

X-int. 2. When did you first see that circular or decision, and where? Was it not before McKay came to Adams Co. to make the contract?

618 Answer. I can't tell whether it was before or after; it was in the same year. I think it between the times of McKay's two visits, & before the contract was made.

X-int. 3. When did you see that circular first?

Ans. In the office of the clerk of the court, John Bixby. M'r Bixby first showed it to me.

Int. 4. State if you saw any notices posted of any character relating to the vote on the swamp-land contract.

Ans. I believe I posted notices that specified how the vote should be polled; it specified that a poll would be opened and the manner in which the vote should be polled. I wrote the notices myself if I posted any. I make every statement partly from recollection and partly because of our manner of doing business. That was the way we done in posting notices in regard to the stock law. I recollect that
619 more distinctly than I do this. There was no copy of the contract with any notices I posted up.

X-int. 5. State if your recollection of what notices you saw posted in 1862 is at all clear. Can you state any notices that you saw on the court-house that summer at this time?

Ans. I can state very definitely that I saw notices of every election in Adams Co. while I was sheriff. I recollect of seeing a delinquent-tax list posted on the court-house door in 1862. To define the particular year, I couldn't answer any other notice that I saw.

Int. 6. Don't you believe that you saw many notices posted on the court-house door in 1862 that you have now forgotten all about?

Ans. Certainly.

Int. 7. Can you state now from recollection the particular places
620 in each township where you posted notices of election in 1862?

Ans. I can state the places and give the identical spot of some of them. One was on Elijah Walton's mill-door, & one on court-house door, & in Queen City Township, on Craig's store-door—there is where I posted all my notices in 1862 & 1863—& in Washington T'p, on Morton's mill, Jasper T'p, James Walker's store-door.

Re-examination by pl'ff:

Int. 1. How long did you post the notice for the election on swamp-land contract before the day of election, & in what township, & in how many places?

Ans. From ten to twenty days. These near home I posted myself, and those away I sent out by others. I posted one in each township.

2. Do you recollect the date of circular that you refer to in your answer to the first cross-interrogatory?

Ans. It was either dated in 1860 or 1861.

621 (Witness is here shown a letter dated General Land-Office,

June 30, 1862, addressed to the governor of Iowa, signed J. M. Edmunds, Comm'r,) and says that is not the same circular or document that I have reference to. In that letter there were requirements that it was impossible for the co. to comply with; in this dated June 30 the requirements might have been complied to.

(Signed) J. F. POWELL.

Fees claimed: $1.60.

Subscribed to by J. F. Powell & sworn to before me this 21st day of Dec., 1871.

(Signed) JAMES WIDNER,
Special Com. of U. S. Cir. Court & Examiner in Chancery.

I certify that the foregoing is the true deposition of Joel F. Powell' which was subscribed and sworn to by said witness before me and in my presence at Quincy, Adams County, Iowa, this 21st day of December, A. D. 1871.

(Signed) JAMES WIDNER,
Special Examiner & Commissioner.

622 STATE OF IOWA,
Adams County:

I, James Widner, special examiner and commissioner, do hereby certify that, by virtue of the commission hereto attached and made part hereof, and in pursuance of the notice to take depositions as aforesaid and hereto attached, I caused the witnesses named in the caption of their depositions to come before me, each of whom being first duly sworn, their respective depositions were taken and reduced to writing by me, and when each deposition was completed it was then signed by the respective witness, after being carefully read over to the witness, who then subscribed and was duly sworn to the same before me and in my presence at the time and place in this above caption mentioned, and upon adjournment as hereinbefore stated; that each adjournment was made as hereinbefore stated, and upon agreement of the parties to said suit; that each witness, before giving his deposition, was first
623 cautioned and sworn to tell the "whole truth," and each and every deposition was signed by the respective witness in my presence, and subscribed & sworn to before me at my office in Quincy, Adams County, Iowa, at the date named in the certificate to each deposition, and at the time & place in the caption mentioned.

That Frank M. Davis appeared as att'y for Adams County, and C. C. Nourse as att'y for defendant, as stated in caption hereto.

That each and every one is the true and correct deposition of the respective deponent, and are herewith returned as such, and that I am not counsel for either party nor interested in the event of the suit.

Witness my hand this 22nd day of December, 1871.

(Signed) JAMES WIDNER,
Special Examiner & Commissioner.

624 *Fees.*

Witnesses:

S. Larimer	$1 60
J. R. Holbrook	$1 48

O. B. Case	$2 30
J. D. Hart	$1 90
J. J. Romang	$1 90
A. J. Kridlebaugh	2 60
G. D. Peterson	$2 20
H. A. Smurr	$2 60
R. H. Schooling	$2 60
H. G. Ankery	$3 20
Charles Bixber	$3 50
John Barnett	$2 40
J. W. Morris	$3 60
John Bixby	$3 60
Isaac Crow	$1 60
J. F. Powell	$1 60
Clerk's fees for depositions	$35 00
16 certificates at 50 c'ts each	$8 00
Sheriff's fees, ser. subpœna Bixber	$3 30
Const. Kridlebaugh	75
Sheriff Bixber	$5 30
	$90 95
Dep. " Larimer serv. sub	80
Const. Bristow serv. subp	3 45
	$95 20

(Endorsed:) N. Opened by stipulation of parties and filed by me March 28th, 1872. George B. Corkhill, clerk.

625 Dedimus protestatem.

Circuit court of the United States, district of Iowa, ss:

To William W. Russell, clerk of the district court in and for the county of Page & State of Iowa, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine N. B. Moore, a resident of Page County, Iowa, on his corporal oath as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein Adams County is plaintiff and The American Emigrant Company defendant, on the part of the plaintiff, upon the interrogatories annexed to this commission. And therefore you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said N. B. Moore to come before you, and then and there examine him on oath upon the said interrogatories.

That you propound to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories; that you cause the whole to be read over to the witness, and the same to be subscribed by him and duly sworn to before you; that you take said deposition in accordance with your certificate which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned; that you then seal up the whole, including this commission and the interrogatories hereto annexed, all en-

closed in one envelope and return the same to the clerk of the United States circuit court at Des Moines, Iowa; that you endorse on the outside of said envelope thus directed the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 15th day of May, 1872, and in the 97th year of the Independence of the United States of America.

Attest:

GEORGE B. CORKHILL.
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out, and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

626 STATE OF IOWA,
Page County:

I, William W. Russell, do solemnly swear that I will support the Constitution of the United States and will faithfully and impartially discharge the duties of commissioner under the within commission, so help me God.

(Signed) WILLIAM W. RUSSELL.

Subscribed in my presence by William W. Russell, and sworn to before me by him this 8th day of August, A. D. 1872.

(Signed) W. M. ALEXANDER,
Notary Public.

627 *Notice to sue out commission to take deposition.*

In the circuit court of the United States for the district of Iowa.

ADAMS COUNTY, PLAINTIFF,
against
THE AMERICAN EMIGRANT COMPANY, DEFENDANT.

Notice.

To Nourse & Kauffman, attorneys for the American Emigrant Company:

You are hereby notified that Adams County, plaintiff, will, on the 15th day of July, 1872, set out of the office of the clerk of the circuit

court of the United States for the district of Iowa, a commission in the above-entitled cause, directed to William W. Russell, clerk of the district court in and for the county of Page and State of Iowa, commanding him to take the deposition of N. B. Moore, a resident of Page County, Iowa, on the several interrogatories hereto appended. Said deposition when taken to be read as evidence in the trial of the above-entitled cause.

FRANK M. DAVIS & J. S. POLK,
Att'ys for Plaintiff.

628 *Interrogatories to be asked N. B. Moore.*

1st. State your name, age, place of residence, and occupation.

2nd. State what occupation you followed in the years 1866, 1867, & 1868.

3rd. State whether or not you acted as attorney in a suit in which Frank M. Davis was plaintiff and Adams County was defendant, pending in the district court of Page County, Iowa, in the years 1866, 1867, & 1868; if so, state for whom you acted, by what authority, from whom you received pay, and state particularly what services you performed in that cause.

4th. State particularly what information the American Emigrant Company had, or *to* what you did in said causes as to your actions and doing in said cause; what they said about the suit and attach any letters or correspondence in your possession concerning your authority to appear in said cause.

629 5th. (Rule question.) Do you know or can you set forth any other matter or thing which may be a benefit to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause; if yes, set forth the same fully and at large in your answer.

Service of the within notice and interrogatories duly accepted and we hereby consent that the commission issue at once and waive the filing of cross-interrogatories, and also waive the interrogatories usually attached by the clerk.

July 15, 1872.

NOURSE & KAUFFMAN,
for Def'ts.

(Endorsed:) Filed July 15, 1872. George B. Corkhill, clerk.

630 Deposition of witness, N. B. Moore, taken at the office of the clerk of the district court of the State of Iowa, in and for the county of Page, at the town of Clarinda, therein on this 8th day of August, A. D. 1872, before me, William W. Russell, clerk of said court, in obedience to the annexed commission attested by George B. Corkhill, clerk of the United States circuit court, district of Iowa, May 15th, A. D. 1872. Said deposition to be read in evidence in a suit pending in said United States circuit court for the district of Iowa, wherein Adams County is plaintiff and The American Emigrant Company, defendant, on the part of the plaintiff.

N. B. MOORE, of lawful age, being first cautioned and sworn to testify to the whole truth, deposeth, answereth, and says as follows, to wit:

Int. 1st. State your name, age, place of residence, and occupation.

Answer. N. B. Moore; aged, 40 years; reside in Page County, State of Iowa; occupation, banker.

631 Int. 2nd. State what occupation you followed in the years 1866, 1867, & 1868.

Ans. Practising law and banking.

Int. 3. State whether or not you acted as attorney in a suit in which Frank M. Davis was plaintiff, and Adams County was defendant, pend-in the district court of Page County, Iowa, in the years 1866, 1867, & 1868; if so, state for whom you acted, by whose authority, from whom you received pay, and state particularly what services you performed in the case.

Answer. I did; I acted, as I supposed, for the American Emigrant Company; J. C. Savery, their general agent at Des Moines, Iowa, paid me; my recollections now are, in relation to the matter, are as follows:

The suit was brought by Davis, plaintiff, in Adams County. Stephen Sibley, esq., of Des Moines, represented the company in that
632 county, and C. E. Millard appeared for the county of Adams. I do not recollect the time the term was held; I think it was the first term after the suit was brought; I think the papers filed were filed by Millard; I understood from Sibley that he was there as counsel for the company, and I think he argued the demurrer filed. He told me then he represented the company, and J. C. Savery, general agent, so stated to me frequently that he was. At the term of the district court to which I refer, an application was made for a change of venue, which application was granted and the venue changed to Page County. Immediately after the judge had ordered the change and designated the county to which it should be sent, Mr. Sibley came to me in the court-house in Quincy and said they would need my services in Page County, on the trial of the cause; almost at the same moment, the plaintiff came up and said he wanted to employ
633 me. M'r Sibley and M'r Millard both spoke up and said he was too late, and I said to Davis that they (the company) had the start of him.

I had several letters from M'r Sibley in relation to the cause and the course to pursue in the trial. He wrote me fully his views of the land and sent me a brief. I appeared for the American Emigrant Company in the trial of said cause as their attorney, and with M'r Millard tried the case. After judgment for the plaintiff I notified the American Emigrant Company of the result. They, by Sibley and Savery, both directed me to perfect an appeal. I, for them, settled a bill of exceptions at Red Oak, at the district court for Montgomery County succeeding the term held in Page County. I had caused the evidence to be written out and embraced it in the bill. I delivered the papers or sent them to the general agent of the company or M'r Sibley, I am not now positive which, and I had some correspondence with them after that.

In all my conversations and correspondence with them, prior to
634 the time when the cause had been disposed of finally in our county and filed in the supreme court, I was by them (the agent Savery and attorney Sibley) recognized and treated as attorney for them. After the cause was filed in the supreme court I sent them my bill, I think, for $200.00, perhaps $250.00; the company then, for the 1st time, denied my employment by them, claiming that they understood I was employed by Adams County. After considerable correspondence and several conversations with Savery and Sibley, Savery for the company, settled with me. I think he paid me $200.00. I think it was in two payments. It

was finally settled some time during the winter or spring of 1868 & 1869.

At the time of settlement and payment by Savery I had all the letters and papers that had passed between us in relation to the suit and my fees with me at Des Moines, the place of settlement. After I received my fees, my recollection is, I destroyed all the correspondence, which included the letters of Savery and Sibley. I have made diligent
635 search for them to-day among my letter-files and in all places where they would likely be found if existing, and I am unable to find them, and cannot attach any of the letters to this my answer. After my settlement with them I had no reason for their preservation, and I am confident I destroyed them. When I settled with M'r Savery he still claimed there was a misunderstanding between us as to who was responsible for the fee. I had no employment except by them; my services consisted in the preperation of the cause for trial and the trial of the cause (assisted in the trial only by M'r Millard) & the preperation of the bill of exceptions.

Int. 4th. State particularly what information the American Emigrant Company had as to what you did in said cause, as to your actions and doing in said cause, what they said about the suit, and attach any letters or correspondence in your possession concerning your authority to appear in said cause.

636 Answer. They knew from my correspondence with them, letters written to Savery and Sibley, what I was doing and what I did. I also had conversations at Des Moines; I think two in relation to the suit after my employment. I cannot attach letters for the reasons given in my former answer.

5th int. (Rule question.) Do you know or can you set forth any other matter or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

Ans. In my answers, where I have used the name of Savery, I refer to and speak of J. C. Savery, the general agent of the American Emigrant Company, and when I have used the name of Sibley, I refer
637 to Stephen Sibley, formerly of Des Moines, now of Chicago. My recollections are, that I paid A. R. Anderson, of Sidney, who was appointed by the court to take down the evidence for writing out the evidence for the company. I think I also paid the clerk for the transcript. The company paid me whatever I paid out. I think it was about $19.00 to Anderson; I cannot recollect am't paid clerk. The question of my employment by the company, that is to say, whether I was or was not employed, was never raised until after I was done with it, and the case had been prepared for the supreme court. I then sent up my bill and they denied my employment, but afterwards settled with me. I made out a new account at M'r Savery's suggestion and to suit him. The form of the account I cannot now recollect. I receipted him for the money; the money paid me was, however, for my services and moneys paid out by me for them in the cause of Frank M. Davis was plaintiff and Adams County was defendant.

(Signed) N. B. MOORE.

638 Subscribed and sworn to by N. B. Moore before me, this 8th day of August, A. D. 1872.

[SEAL.] (Signed) WILLIAM W. RUSSELL,
Clerk D. C. Page County, Iowa, Commissioner.

STATE OF IOWA,
Page County:

I, William W. Russell, clerk of the district court of the State of Iowa, within and for said county of Page, do hereby certify that, in pursuance of my duties under the annexed commission, I did, after being first duly sworn on this 8th day of August, A. D. 1872, cause to come before me, at my office in Clarinda, in said county and State, the said witness, N. B. Moore, who, being by me first duly cautioned & sworn to testify the whole truth, answered and testified as set forth in the foregoing deposition; that I caused the questions and his answers thereto to be written out in full, and that after the same was all by me read over to him it was by him subscribed to in my presence and by him duly sworn to
639 before me at the place & on the date last aforesaid; that neither party to the suit in which this deposition is to be used nor the attorney of either party was present during any part of the examination; that I am neither the agent nor attorney of either party nor in any way interested in the event of the suit; that said deposition is now here by me sealed up with the commission aforesaid and returned as therein directed.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at my office in Clarinda, this 8th day of August, A. D. 1872.

[SEAL.] (Signed) WILLIAM W. RUSSELL,
Clerk as aforesaid and Commissioner.

(Endorsed:) Package 19. Opened by consent of counsel and filed this 16th day of Oct., 1872. George B. Corkhill, clerk.

640 In the circuit court of the United States, district of Iowa.

ADAMS COUNTY, PL'FF,
vs.
THE AMERICAN EMIGRANT CO., DEF'T. } No. 168. Chancery.

To save, on the part of plaintiff in the above-entitled cause, the *the* necessity of putting in evidence the several patents executed by the State of Iowa to Adams County, under the swamp-land grant, or copies thereof, we admit:

1st. That the State of Iowa executed to said county on the 13th day of August, 1860, patent No. (27,) for $2,914\frac{98}{100}$ acres swamp land, which are described in the deed from the pl'ff to the def't.

2d. That on the 5th of June, 1861, she executed patent No. (59,) for $765\frac{53}{100}$ acres more, which are also described in said deed to def't.

3d. That on the 18th of November, 1867, she executed patent No. (160) for $938\frac{87}{100}$ acres more.

4th. That on the 9th day of April, 1869, she executed patent No. (176) for 40 acres more.

5th. That on the 9th of January, 1871, she executed patent No. 199, for $37\frac{36}{100}$ acres more, all situate in said Adams County.

And we admit also, 6th. That on the 23d of September, 1865, the State executed to said county patent No. 8 for $747\frac{12}{100}$ acres, located with indemnity scrip granted for swamp land in Adams County, disposed of by the government; and,

7th. That on the 29th of November, 1867, she executed patent No. 80 for 200 acres more, located with like scrip; and,

8th. That on the 31st of May, 1870, she executed patent No. 90 for 80 acres more, located with like scrip.

And that all the aforesaid lands were prior to the execution of said several patents by the State duly patented by the United States to the State of Iowa under the swamp-land grant.

And we acknowledge notice to produce on the trial the original contract and deed, from Adams County, of which copies are attached to the petition, unless the said copies are admitted as correct.

Oct. 21st, 1872.

(S'g'd) NOURSE & KAUFFMAN,
& J. A. HARVEY,
Att'ys for Def't.

(Endorsed:) Adams County vs. The American Em. Company. Origin. patents and title of plaintiff. Package No. 20. Stipulation on title. Defendant's admissions. Filed Oct. 29, 1872. George B. Corkhill, clerk.

641 And upon the trial of said cause the said respondent, to sustain the issues on its part, introduced and read in evidence certain documents and depositions, of which the following are true copies:

642 In circuit court of U. S.

ADAMS COUNTY
vs.
THE AMERICAN EMIGR'T CO.

It is stipulated that the defendant may take depositions as upon notice duly served on the 28 day of March, 1872, to be used on the trial of the above case. Depositions to be taken at Des Moines, Iowa, before a notary public; the time limited within which def't is to file proof in the above case is hereby waived. Des Moines, March 20, 1872.

The time to file proof by either party is extended to May 10, 1872.

(Signed) FRANK M. DAVIS,
Att'y for Plaintiff.
NOURSE & KAUFFMAN,
For Defendant.

643 In circuit court of the United States.

ADAMS COUNTY
vs.
AMERICAN EMIGRANT CO.

Deposition of witnesses produced, sworn, & examined, pursuant to the annexed stipulation, before Geo. H. Lewis, a notary public in & for Polk County, Iowa, at Des Moines, Iowa, said deposition to be made in evidence on the trial of a cause now pending in the circuit court of the United States, in which Adams County is pl't'ff & the American Emigrant Company is def't, on behalf of said def't.

HORACE L. SKINNER, of lawful age, being sworn according to law, deposed as follows:

Int. 1. State your name, residence, and occupation.

Ans. Horace L. Skinner; residence, Des Moines, Iowa; I am agent of the American Emigrant Company.

644 Int. 2. State where you resided and what was your business during the years 1860, 1861, 1862.

Ans. I resided in Washington City *city*, D. C., during that time, and up to some time in December, 1862, I think. I had charge of the swamp-land division of the General Land Office. I was the principal clerk in charge of the work, issuing under the swamp-land grant of Sept. 28th, 1850, subsequent amendatory laws.

Int. 3. State whether or not, from your official position, you had an opportunity to know & did know the condition of the claim made for swamp-lands and swamp-land indemnity pending in the dep't in the year 1862?

(Objected to by pl'ff as leading and irrelevant, because it does not relate to the land in controversy.)

Ans 3. I had such opportunity, & believe I did know the condition of these claims.

645 Int. 4. State fully & particularly what rulings & decisions had been made by the department up to Sept. 3*t*d, 1862, & what was the conditions of claim then pending in the department on the part of the several counties in the State of Iowa for swamp-land & swamp-land indemnity, & how they were effected by such rulings & decision. If you have copies of such rulings & decision, please set them out as exhibits to your deposition.

(Objected to by pl'ff. 1st. Incompetent, because the ruling & decision is the best evidence. 2nd. Irrelevant, as the condition of land claim not in controversy would not effect this case. 3*t*d. It asks the opinion of the witness on a matter to be tried by the court.)

Ans. After the passage of the swamp-land grant of Sept. 28, 1850, as a prelim*a*n'ry action, the Secretary of the Interior & Commissioner of the General Land Office, in consultation, adopted the circular of
646 the 21st November, 1850; addressed to the surveyor general of the several States. This circular submitted two forms of ascertaining these swamp-lands, one or the other of which was to be adopted: first, to select the lands from the field-notes of the public surveyor; second, to ascertain them by examination in the field through agents appointed for the purpose. The State of Iowa accepted the second mode, and proceeded to make her selections. Lists of these lands were to be reported to the surveyor-general at Dubuque, and if the evidence of the swampy character of the land was such as to satisfy him, under the instructions contained in the circular, he was directed to report a list thereof, or so much thereot as were proven to be swamp, to the Commis. of the Gen'l Land Office, furnishing a copy of the same to the proper U. S. local land officers for notation on their tract & plat books. These lists, or rather the lists reported to the Gen'l Land Office,
647 constituted the selections. By subsequent decision, in 1851 or 1852, the grant of swamp-lands was declared to be a grant "in presenti."

Now comes the act of M'ch 2nd, 1855, for the relief of purchasers & location of swamp and overflowed lands. This act provides for the issue of patents to purchasers & locators, & provides indemnity to the States in lieu thereof, on satisfactory proof of the swampy character of the land being made to the Commis. of the General Land Office. Immediately after the passage of this act the executive of the several States were advised of the provisions of the law, and furnished with a form of proof to enable them to obtain the indemnity provided.

On the 3rd March, 1857, was passed the act commonly known as the "confirmatory act," confirming the selections of swamp-lands. These

reported to the Commis. of the Gen'l Land Office, with certain limitations, and continuing the indemnity provision of the act of 1855, prior to the passage of this act, viz, that of 1857, Commis. of the Gen'l
648 Land Office had issued public notice that parties desiring to enter lands claimed as swamp would have the privilege, on making affidavit that the lands were not swamp-lands, to contest the State claim, and if successful, on showing the land to be fit for cultivation, would have the preference right of entry, except in cases where the lands had been approved. Instructions issued in the State immediately after the act of M'ch 3rd, 1857, put an end to all these controversies, and the lands vacant were approved and patented to the States. This related to the lands of which lists which had been then up to that time, viz, 3rd M'ch, 1857, reported on swamp selections. The proof referred to in act of 2nd of March, 1855, & 3rd of March, 1857, was decided to be that taken subsequent to the proof establishing the character of the lands originally; in other words, additional proof. The principle contained in the circular of Nov. 21, 1850, were materially changed by instructions from the Gen'l Land Office,
649 so far as the State of Iowa is effected, under date of the 23 of June, 1860.

It is held in those instructions that the grant contemplates the inundation of extensive region of country by such natural arteries as the Mississippi River, & that the lands evidently intended to be granted as swamp are those only which by reason of their swampy character & liability to overflow are worthless in their natural condition, on which crops cannot be raised without reclamation by levers or drains, & that an overflow or inundation merely temporary an effect did not bring the lands within the grant. The law contemplates such long continued overflow or inundation only as would totally destroy crops & prevent the raising of them without artificial means, as levers, &c., as are employed on the Mississippi. A copy of the decision or circular above referred to is fully set out in Exhibit A hereto attached & made a part hereof.

I find a copy of the same document set out in the official report
650 of the register of the land office of the State of Iowa, for Nov. 16, 1865, on page 168. I submit herewith, marked "Exhibit B" a copy of a letter from the Commis. of Gen'l Land Office of date of Oct. 11, 1861, to the Secretary of Interior, as recommending change in the character of proof, &c.

This document appears in the report above referred to commencing on page 185. I also submit a printed copy of a letter from the Commis. of the Gen'l Land Office, of the 20th June, 1862, to the governor of Iowa, as containing new instructions respecting indemnity claims. This letter appears in the report above referred to, commencing on page 173, marked "Exhibit C." The commis. of the Gen'l Land Office, in his report of 1862, bearing reference to a number of indemnity claims in Illinois & Iowa, says:

"Further action on these claims is deferred under the decision of the Secretary of the 27th June, 1862. These & all other claims of the same nature resting upon old proof on our files, it is proposed to return
651 to the State authorities for further testimony in accordance with the said decision and the principle laid down pursuant to the same in the instruction of 20th June, 1862."

The claim for indemnity then enacted upon, to wit, the 30th June, 1862, were suspended. These claims remained suspended until the claim for Cass County, Iowa, made up anew, or a form of proof meeting fully the

requirements of the instructions of 20th June, 1862, had been prepared & submitted, being the first case under those instructions.

(Being unable to finish the deposition of the said H. L. Skinner, on account of the lateness of the hour, the further taking of the said deposition is hereby adjourned to Friday, March 29th, 1872, at two o'clock p. m.

(Signed) GEO. H. LEWIS,
Notary Public.)

Pursuant to the above adjournment of the 29th day of March, 1872 at Des Moines, Polk County, Iowa, I continued the taking the
652 deposition of the said H. L. Skinner, who further deposed as follows:

Int. 5. State who prepared the form of proof on which the claim of Cass County was determined.

(Objected to as irrelevant to the matters in controversy.)

Ans. 5. It was prepared by the representatives or agents of the American Emigrant Co.

Int. 6. State if the Cass County claim under that form of proof was or was not successful before the department, & who prosecuted or attended to the presentation of that claim.

Ans. It was successful, & was presented or prosecuted by M'r J. C. Savery & myself, acting for the American Emigrant Co.

Int. 7. Please examine the form of proof on pages 176 & 177, & concluded on pg. 178 of the report of the registrar of the State land
653 office of Nov. 16, 1865, & state what you know about the origin & use of the form of proof there given.

(Objected to because the evidence would be incompetent & secondary.)

Ans. 7. I have examined the form referred to & believe it to be that used in the Cass County case, & that it was prepared to cover all the requirements of the circular of June 30, 1862. This form of proof was made by the representatives or agents of the Am. Emigrant Co., & as soon as it was ascertained to be successful the same form was adopted by the gen'l agent of the State of Iowa, for the claims he had in charge, & that on that proof so made the several claims so made by him were passed upon and allowed.

Int. 8. Had M'r Baker anything to do with obtaining the allowance of the claim of Adams County?

Ans. 8. He had not.

Int. 9. Can you give the date of the allowance or decision of
654 the department of the claim of Cass County above referred to?

Ans. 9. The cash indemnity claim of this county, viz, Cass County, was allowed at two different times. The first of two thousand seven hundred & thirty-one dollars & eighty-seven cents ($2,731.$\frac{87}{100}$) was allowed on the 18 Feb'y, 1863; and the second of eight thousand five hundred & ninety-one dollars & eighty-one cents ($8,591 $\frac{81}{100}$) on the 16 April, 1866. The land indemnity claim was allowed at two different times. The first, of 560 acres, on the second of March, 1863; the second, 9,042 $\frac{92}{100}$ acres, on the 19th April, 1866.

Int. 10. State whether or not, at any time after the suspension & rejection of the claims pending in the department on the 30th June, 1862, the department allowed any claim for swamp-lands or swamp-land indemnity upon old proofs filed prior to the 30th June, 1862; &, if
655 so, state what case was first thereafter taken up & so determined or allowed, & who presented the claim & conducted the claim before the department & obtained such allowance.

(Objected to, as irrelevant, incompetent, & immaterial.)

Ans. 10. I recollect particularly that the claim of Adair County was presented by M'r J. C. Savery (to the Comm'r of the Land Office), in connection with myself, and that we were some months urging & arguing the claim before that office & the Dep't of the Interior; that we finally succeeded in overcoming the obstacles presented & having the claim allowed.

Int. 11. State particularly the ground upon which said claim was allowed, & whether or not it was the first case of the kind subsequent to the 30th June, 1862, in which the old proof filed prior to that date was recognized.

(Objected to, as secondary, incompetent, & irrelevant.)

656 Answer 11. It was allowed on the ground that the proof was made & received by the dep't prior to the issue of the instructions of June 30th, 1862, & was the first case of the nature presented.

Int. 12. Please examine the documents produced purporting to be the report of the Secretary of the Interior for the years 1864–'5, & give to the notary the contents of said report upon the matter of the Adair County claim, & also state whether the book from which you produce this is an official copy purporting to be published by authority of law.

(Objected to, as incompetent and secondary.)

Ans. 12. I have examined the document referred to, & state the contents as follows:

" In the adjustment of swamp indemnity we have exacted from those furnishing proof a rigid adherence to the instructions of 30' June,
657 1862, transcript of which is in appendix, & all proof for indemnity since taken has been critically tested by those instructions. They have, however, been so far modified by the ruling of the department in the case of Adair County, Iowa, as to admit for consideration claims for indemnity prepared under former rulings, even though they may have been filed after the date of the instructions of 1862, where it may be satisfactorily established that the proof had been fully completed prior to that date."

I believe the book to be an official copy of the report required to be published by law. This extract appears on page 32 of the volume, viz, the report of the Secretary of the Interior for 1864–'5.

Int. 13. Please examine the report & the appendix, & state what document is given as instructions of date of June 30, 1862, & whether or not it is the same as you have given as an exhibit to your deposition.

658 Ans. 13. I have examined the report of the Secretary of the Interior for 1864–'5, and on page 63 I find, under head of appendix, the requirements of the Land Office in indemnity claims, & same appears to be in the precise language as that stated in the paper marked as " Exhibit C," heretofore attached.

(Defendant here gives notice that he will produce the original report referred to on the trial of this cause, & requests the notary to identify the same by marking it as Exhibit D on the title-page of the book & appending his signature thereto.)

Int. 14. State the date at which the Adair County claim was allowed, & the ruling upon it above referred to was made.

Ans. 14. To the best of my recollection, the land indemnity claim was allowed in August, 1864, & this was immediately after the ruling in the case had been changed or made by the def't in that case, & the cash indemnity was allowed, I think, in April, 1865.

659 Int. 15. State what swamp lands in place were allowed to

Adams County prior to September, 1862, & the number of acres of said land, & and the date of approval by the dep't.

(Objected to, as secondary.)

Ans. 15. On the 1st M'ch, 1859, there were approved by the Secretary of the Interior $765\frac{53}{100}$ acres. On the 25' June, 1859, $2{,}914\frac{19}{100}$ acres were approved, & there have been several 40-acre tracts since approved.

Int. 16. State when the proof was filed upon which the claim for said lands approved in 1859 was allowed.

(Objected to, as secondary.)

Ans. 16. It was before the act of M'ch 3, 1857. I think it was in 1854 & 1856.

Int. 17. State if the surveyor-general had returned lists of those lands to the Comm'r of the Gen'l Land Office prior to the 3*t*d M'ch, 1857; & if so, how long before?

(Same objection as above.)

660 Ans. 17. He did return the lists prior the 3*t*d M'ch, 1857, being somewhere during 1854, 1855, & 1856.

Int. 18. Can you state the reason of the delay in the approval of these lands, & why they were not approved until 1859, & also state if you were in the dep't during that time?

(Objected to, as irrelevant and secondary.)

Ans. 18. A part of the delay was occasioned because of the necessity of entering the tracts in the tracts books of the Land Office, in order to ascertain interferences, but more especially because of the public notice issued on the 21st of Dec., 1858, permitting contests on the part of individuals desiring to enter presenting to the local land officers affidavits alleging that the lands were not swamp. The form of affidavits in these cases had been prepared by the Gen'l Land Office. The notice & form referred to appear on page' 544 & 545 of "Lester's Land Laws."

661 Int. 19. State if the form given is "Lester's Land Laws" are correct, & your personal knowledge of the same.

Ans. 19. I believe the forms are correct. I aided in their preparation.

Int. 20. State what other questions or rulings of the dep't affecting the allowance of swamp land claim' in Iowa were made before the dep't, & favorable rulings obtained through the labor & efforts of the agent & attorneys of the American Emigrant Company.

(Objected to because the evidence would be irrelevant, secondary, immaterial, & incompetent.)

Ans. 20. A rule existed, sanctioned by the def't, that the field notes of the public surveyor should show affirmatively that the lands were swamp & overflowed in order to the approval of lands in place or allowance of indemnity. Through the efforts of the agents of the American Em. Co., the rule was so modified as to permit approvals & the

662 grant of indemnity of all tracts not shown by the field notes to be rolling prairie. Again, it had been held by the dep't that no indemnity claims would be allowed except for tracts located or entered with cash prior to M'ch 3*t*d, 1857, & where the lists embracing the tracts had been reported prior to M'ch 3*t*d, 1857.

The question was presented to the Comm'r of Gen'l Land Office, claiming that the act of 1857 provided indemnity for all lands disposed of, regardless of time of entry or date of report. The case went to the Dep't of the Interior, the Comm'r being refused the claim, & the Secretary concerned in the views given by the Comm'r. Subsequ'ntly, another case of the same class was presented, when he, the Comm'r of Gen'l Land Office, declared to allow in like manner, & the case went to the Secretary on appeal. This officer referred the matter, for advice, to

the Attorney-Gen'l, after argument had been made by M'r Ruggler, of New York, M'r Lyman, of New York, & M'r Savery. This result-
663 ed in the opinion of the Att'y-Gen'l, dated April 20, 1866, appearing on page 382 of volume 2 of land laws, regulation, & decision, by Lester. This decision, in brief, is that indemnity is provided only for lands sold or located before the 3*d* of M'ch, 1857, without limitations of date of report of such lands as swamp.

Int. 21. State what you know about the expenses incurred by the American Emigrant Co. in Washington for the employment of agents, attorneys, & clerks in the presentation & prior execution of swamp-land claims from Iowa, & in obtaining rulings & decisions affecting the various claims in which they were interested.

Ans. 21. I know that M'r Savery was in Washington City on that business for nearly, if not quite, half the time running through 1863, '4, '5, & '6, & that Gen'l Lyman, of New York, was there frequently, for a month or more at a time, during the same period, & that M'r
664 Ruggler, of New York, att'y for the Em. Co., was also there frequently, for a week or two weeks at a time. M'r F. E. Brown was in Washington City during all the winter of 1862–'3. M'r McKay was there, at one time, over two months. M'r Hooker & M'r Hammond, of Hartford, and also M'r Chamberlain, of Hartford, & M'r D. L. Harris, of Springfield, were in Washington City at several different times, in consultation before the Dep't of the Interior, engaged in giving questions, inspecting claims represented by the American Em. Co.; I remaining there all the time, viz, the year above referred to, & up to Oct., 1867. M'r Savery & myself have been there frequently since. I do not know, personally, the amount paid those parties except so far as I am concerned.

Int. 22. State if you were constantly employed in their service from Dec., 1862, & at what salary, & whether it required your constant attention.

Ans. 22. I was employed in their service from Dec., 1862, up to
665 the time of my leaving there, in Oct., 1867, at a salary of $2,000.00 per year, and an allowance of some $200 during the period, for certain contingent expenses, giving my undivided attention to the prosecution of the claims of the Am. Em. Co.

In cross examination the witness testified as follows:

C.-int. 1. How long were you in the land dep't as an officer?

Ans. 1. From Jan'y, 1853, to some time in Dec., 1862.

C.-int. 2. Did you enter the service of the Am. Em. Co. as soon as you left gov't employment?

Ans. 2. Within a few days after, I think.

C.-int. 3. Were the decisions & circulars of the Secretary of the Interior refer'ed to in your ans. to int. 4th in writing?

666 Ans. 3. All the circulars & decisions referred to in my said answer were so w'itten.

C.-int. 4. Was not the ruling of the dep't of 23*d* June, 1860, limiting the swamp lands to the Mississippi & Missouri Rivers, shortly afterwards changed or modified by the Secretary of the Interior?

Ans. 4. I have no recollection that the Secretary of the Interior ever took any action upon it.

C.-int. 5. Was the decision of the 23 of June acted on as the rule of the dep't in regulating the Iowa swamp lands?

Ans. 5. It remained as the rule of action until a reversal was obtained by the efforts of the agents of the American Emigrant Co., this being a

compromise, as we always insisted that they had no right to apply the rule. This was while M'r Harlan was Secretary of Interior.

667 C.-int. 6. What was the date of this reversal?

Ans. 6. I can not recollect the date.

C.-int. 7. Do you know anything personally about the Adams County proof? If so, state it fully.

Ans. 7. I do not recollect anything about that proof.

C.-int. 8. Who proposed & submitted the proof in the Cass County case?

Ans. 8. The agents of the American Emigrant Co.

C.-int. 9. Did you read from a book in your ans. to int. 4, concerning the decision of the comm'r in reference to Illinois & Iowa swamp land claims? If so, state what book.

Ans. 9. I did not read from a book. I read from a pamphlet which contains the exact words appearing in a report of the Comm'r of the Gen'l Land Office for 1862, I think.

668 C.-int. 10. State the name of the pamphlet & how you know it contains the exact words.

Ans. 10. The pamphlet is entitled "The swamp land claim of Iowa; statement of the American Emigrant Co.," for 1866. The article containing the words read was written by myself, and the quotation was copied from a report of the Comm'r of the Gen'l Land Office for 1862, I think.

C.-int. 11. Were you acting as agent of the Am. Em. Co. or for them or in their interest, prior to the 1st Dec., 1862? If so, state in what capacity & what you did?

Ans. 11. My recollection is that I was not employed by them in any capacity until the later part of Dec., 1862.

C.-int. 12. What proofs for Adams County were filed in the years 1854 & 1856, as you state in your ans. to int. 16?

669 Ans. 12. It was the proof by the surveyor gen'l'r, being his own certificate appended to the list of swamp land selections based on the evidence of the State swamp land agents making the original selections of swamp lands under the grant of 1850.

C.-int. 13. Did the dep't require lands in place which had been selected & reported by the surveyor gen'l prior to M'ch 3*d*, 1857, to be established as swamp by additional proofs, before they were certified to the State?

Ans. 13. The dep't did not require any additional proof, but at the same time under the public notice of Dec., 1855, they were permitting parties to contest the claim of the State to swamp lands reported by the surveyor-gen'l, when they filed affidavits alleging a contrary character to the lands under regulation prepared in the case.

C.-int. 14. Did they allow these contests after the passage of the act of M'ch 3, 1857.

670 C.-ans. 14. All contests under that notice of 1855, except so far as they had been adjudicated, were closed out by public notice issued under the act of 3*d* M'ch, 1857. This public notice is dated 18 M'ch, 1857.

C.-int. 15. What counties were the cases from which you speak of in your ans. to int. 21st?

Ans. 15. A test case brought on tracts in Carroll & Taylor Counties.

C.-int. 16. Were you in the exclusive employment of the Am. Em. Co. in presenting these Iowa claims, & how much was involved in these claims?

Ans. I was in the exclusive employment of the emigrant co., and the entire amount of the lands involved in the claims reached to something

over 500,000 acres, this being the quantity of lands claimed or enuring to the several counties with which they had contracts.

671 On account of the lateness of the hour the further taking of the above deposition is hereby postponed to one p. m. of Saturday, M'ch 30, 1872.

(Signed) GEO. H. LEWIS,
Notary Public.

Pursuant to the above adjournment, on this 30th day of M'ch, 1872, at Des Moines, Polk Co., Iowa, I continued taking the deposition of the above-named H. S. Skinner, who further deposed as follows:

Redirect examination:

R.-int. 1. Please state whether or not the dep't granted any indemnity, either in scrip or cash, upon the return of the surveyor-gen'l of the lists of selections, or whether or not proofs were filed & examined in the dep't at Washington with reference to each tract upon which indemnity was allowed. What was the practice of the office in reference to this matter so far as it related to swamp land claim from Iowa?

672 (Objected to as irrelevant, and not proper re-examination, because nothing in reference to the practice of the office has been referred to in the cross-examination, & also incompetent.)

R.-ans. 1. So far as the State of Iowa in concerned no indemnity claims either for cash or land were ever allowed, except on proof taken subsequent to that on which the selections were based, as the Secretary of the Interior some time in 1855 decided that under the law providing the indemnity such additional proof must be required.

R.-int. 2. State what part of the claim mentioned as amounting to 500,000 acres in which the Am. Em. Co. was interested, was ever realized to the counties or to the company, & whether or not the 500,000 acres covered the selections made by the counties or their agents at a time when the emigrant co. had nothing to do with the business.

673 R. ans. 2. The 500,000 acres constitute the aggregate of selections reported by the surveyor gen'l to the comm'r of the Gen'l Land Office, made up from the reports of the agents of the several counties with which the Am. Em. Co. had contracts, & are wholly of selections made by the agents aforesaid, prior to the dates of the several contracts—the Am. Em. Co. having had nothing to do with making those selections. Of this body of 500,000 acres, about 140,000 acres of lands in place have been patented to the State. Scrip has been issued out of this aggregate of 500,000 acres for 71,616$\frac{52}{100}$ acres. Cash indemnity claims have been paid for lands included in this aggregate of 500,000 acres, amounting to $73,976$\frac{44}{100}$. 50,235$\frac{17}{100}$ acres had been certified under the railroad grant of 15th May, 1856, 68,184$\frac{14}{100}$ acres were located with warrants after the 3*t*d M'ch, 1857. 15,789$\frac{71}{100}$ acres have been entered with cash since the 3*t*d M'ch, 1857. Nearly 70,000

674 acres remain vacant, or have not been approved, or patented under the swamp-land grant. Claims remain unadjusted for lands disposed of by the gov'm't, before the 3*t*d M'ch, 1857, amounting in aggregate to about 72,000 acres, part for cash, & part for lands.

R. int. 3. State, of the several items above, whether anything has been realized either by the counties or by the Emigrant Co. to date, except the three items of 140,000 acres, in place 71,616$\frac{52}{100}$ acres of scrip, & $73,976$\frac{44}{100}$ cash?

R. ans. 3. Nothing beyond these three items mentioned above has

been realized. The entire amount of scrip, viz, 71,616 $\frac{59}{100}$ acres, has been located in this State.

Re-cross examination:

C.-int. 1. What was the general character of proof that was rejected as insufficient in the swamp-land claims by the dep't, & the number of witnesses to each tract of those proofs which were rejected?

675 Ans. 1. The proofs were rejected because of irregularities, & further, because the office continued to apply the test of the field notes, Comm'r Edmunds never yielding his view that the test should be applied. I do not recollect the number of witnesses.

(Signed) H. L. SKINNER.

Subscribed & sworn to by the said H. L. Skinner, before me, and in my presence, this 30th day of M'ch, 1872, at Des Moines, Iowa.

(Signed) GEO. H. LEWIS,
Notary Public.

J. C. SAVERY, of lawful age, being duly sworn, according to law, deposed as follows:

Int. 1. State your name, age, residence.

Ans. 1. J. C. Savery, Des Moines, age 48.

Int. 2. State if you were connected in any way with the Ameri-
676 can Emigrant Company during the years 1862, 1863, 1864, 1865, & subsequent years, & if so in what capacity.

Ans. 2. I was appointed by the company when they commenced the purchase of lands in Iowa, or their Washington agent, to conduct the prosecution of their claims against the government, & held that position until Jan'y 1st, 1870.

Int. 3. State, if you know, what agents, clerks, or attorneys, if any, were employed by the Am. Em. Co. in the present action & prosecution before the dep't at Washington of the swamp-land claim from Iowa, in which said em. co. had an interest?

(Objected to by pl't'ff for irrelevancy & immateriality.)

Ans. 3. Gen'l Lyman of New York City, Francis Chamberlain of Hartford, Conn., Sam'l Ruggler of New York, T. E. Brown of Iowa, & F. C. D. McKay of Iowa, were retained as counsel & attorneys for the co. at Washington. H. L. Skinner, after resigning his position as
677 chief clerk of the land-office, was retained as clerk of the co., to reside at Washington. Other members of the company were there as agents of the co. on special occasions, viz, Hooker & Hammond of Hartford, Conn., & Dan'l L. Harris of Springfield, Mass.

Int. 4. State the time employed by yourself & other persons whom you have named at Washington in the prosecution & attention to the claims above mentioned?

Ans. 4. I went to Washington in the latter part of 1862, and devoted my time exclusively to attending to the Washington business of the co. for four years, and after that time until 1st Jan'y, 1870, a portion of my time was devoted to that & other business of the co. in Washington & New York. In the latter part of 1862, Lyman & the other parties named commenced acting for the company in a system of prosecution of
678 the cases, & continued in their service from time to time during the term for which I was entrusted with the special management of the business.

Int. 5. State generally the condition of the swamp-land claims from Iowa pending in the dep't at Washington at the time you entered upon your duties as agent of the Am. Em. Co. above referred to, & the dis-

position of the Comm'r of the General Land Office in relation to these claims, & whether or not up to that time any county in the State of Iowa had ever realized any indemnity in scrip or cash out of said claims; &, if so, state about the amount.

(Objected to because irrelevant & totally immaterial to the issue & incompetent or secondary.)

Ans. 5. Owing to the complicated condition of the swamp claims of Iowa, by reason of the various decisions & rulings of the dep't, running through a term of years from the date of the grant, I can only answer in
679 the most general terms & give the conclusion I arrived at. After I had spent some time in Washington investigating the condition of the swamp claims of Iowa, I was told in so many words, by the Comm'r of the General Land Office & Secretary of the Interior, that the greater portion of the selections of swamp-lands made by the State of Iowa & the proofs thereon to sustain its swampy character, so far as it had been made, was a gigantic fraud on the part of the counties of Iowa to secure an immense land grant that was never contemplated by the swamp grant, & that all the proofs that had been submitted had been ruled out & would not be acted on. I ascertained from the records that some time before this a small allowance had been made upon a large claim of scrip & money before the dep't had taken this position. I arrived at the conclusion that these claims were worthless from my investigations
680 at the dep't & conversations with the officials & a conference with several agents appointed by the governor of Iowa, who were then in Washington; who left Washington & returned home, abandoning the prosecution of the business for which they were appointed.

Int. 6. State the amount of expenses incurred by the Am. Em. Co. in prosecuting before the Dep't of the Interior the swamp-land claims from Iowa in which it was interested, including clerk-hire, att'y's fees, & expenses of officers & agents of the em. co. engaged in Washington in that business.

(Objected to as immaterial & irrelevant.)

Ans. 6. The best answer that I am able to give to this question is this: About the 1st of Jan'y, 1870, two officers of the Am. Co. & myself, as a committee appointed by the directors to report upon the condition of the Washington business, met in New York & made an estimate of what had been expended up to that time in cash of legitimate expenses
681 in the prosecution of the claims of the co. at Washington, which estimate amounted to about $73,000, and it was concluded that the progress of the business there would not justify any further expenditures & it was abandoned.

Int. 7. State if, from your knowledge of the disbursement of the co., the amount estimated as above was or not correct & represented the amount actually expended by the co. for the purposes mentioned.

(Same objection as last above.)

Ans. 7. It was, or the most of it was, disbursed by me as conducting the prosecution of the business.

Int. 8. State whether or not the emigrant co. expended any money in employing agents & making new & additional proofs of the swampy character of the lands embraced in the claims in which they had an interest in Iowa; and, if so, state, if you can, who had charge of the
682 business & what amount was so expended?

Ans. 8. The expenses of making the proof was included in the estimate given in my above answer.

This was one item of the Iowa expenses that entered into the Washington estimate. New proofs were made in most of the counties, the

claims of which were purchased by the Am. Em. Co. As to the amount of expenses in other regards, such as agents of the co. in the counties and the general management of the Iowa business, I am not able to state definitely. I can only say that the general agent managing the business at Des Moines was paid a salary of $3,500, & the general att'y for Iowa was paid about the same amount.

Int. 9. Please examine Exhibits E & F, attached to package No. 11 of pl't'ff's proofs, filed in this cause M'ch 22, 1872, & state who obtained an allowance of the indemnity on the lists *or* there certified.

683 Ans. 9. If the schedule to which my attention is called embrace the lands in Adams County, I presented the case & conducted the management of it until it was adjusted.

Int. 10. State, if you can, why it was that the adjustment of the greater portion of this claim was not accomplished until 1865 & '6, & explain why that adjustment was made at different times & in small portions or parts, if you know, & give the particulars of the allowance of the claims. (Objected to as incompetent and irrel*a*vent.)

Ans. 10. Adams County was among the first claims that we presented. There had been some proof made in that county which we found in the dep't, which had been ruled upon by the dep't as insufficient for various reasons, some of which were that it was informal & in direct con-

684 flict with the field-notes of the government surveyor. *Whether* adopted this policy as the first step in the prosecution of these claims to carefully inspect the proof made upon each tract & select such proofs as seemed to contain less of the objections upon which it had been rejected & to make a test case before the Comm'r on this portion of it.

The Comm'r ruled against this limited amount, and rejected the claim. We then took a small list of swamp selections in Cass County, such as were shown to be swampy by the field-notes of the gov'm't survey, & made new proof upon the spot in strict compliance with the later rulings of the department.

This was referred by the Comm'r to the Secretary of the Interior. We then took an appeal from the Comm'r to the Secretary of the Adams County case, and after several hearings before him, in which we presented both cases, we entered into a compromise, which was this:

685 That a certain portion of the old proof that had been filed, which came up to a certain standard in accordance with former instructions, should be adjusted, & after that date no old proof should be recognized, but that all proof hereafter should be made in strict compliance with the new instructions. The Comm'r & Secretary of the Interior still adhered to their former decisions, that the field-notes should govern as the rule in the adjustment of the Iowa claims. And upon this basis the claims were prosecuted. This was about April, 1863, and we procured for Adams County, under this compromise, indemnity scrip to the amount of about 750 acres. This was all that was realized until about March, 1865, when we procured from the Secretary of the Interior a further modification of the rulings of the department, & procured a further allowance this time of cash indemnity of four thousand three hundred & three dollars & forty-five cents ($4,303$\frac{45}{100}$), & in Aug.,

686 1866, two hundred acres further of indemnity scrip, and in 1868 a further allowance of eighty (80) acres.

Int. 11. State if you were acquainted with F. C. D. McKay, & where he had his principal office in connection with the emigrant co., & state about the time of his death.

Ans. 11. I knew him as a resident of Des Moines, in the employ of the American Emigrant Co, as their general agent for Iowa, for about

six years. He died in the spring of 1866, as near as I can remember. He had his office in Des Moines during all that time.

Int. 12. State who took charge of the books & papers of his office at the time of his death, & what connection you had with that office after that time.

Ans. 12. Whenever I was at Des Moines during my engagement with the company I made the company's office my headquarters, &
687 was familiar with the affairs of the office during the time of his agency, & from that time to the present.

Int. 13. State if you are acquainted with the handwriting of Frank M. Davis, of Quincy, Adams Co., Iowa, & the handwriting of said F. C. D. McKay.

Ans. 13. I am familiar with the handwriting of said McKay, & have seen enough of the writing of said Davis so as to be able to recognize it.

Int. 14. Please examine the paper here produced, & attach the same to your deposition as Exhibit E, & state whose handwriting the said paper is in, and if of more than one person, state what portions were written by each.

Ans. 14. The paper shown me is signed by Frank M. Davis, Quincy, Adams Co., Iowa, which I believe to be in his handwriting, & the name of F. C. D. McKay, which I believe to be in the handwriting of said McKay. All of the writing on the paper above & including the
688 signature of Davis, I believe to be in his, the said Davis', handwriting, & all below that in the handwriting of said McKay.

Int. 15. Please state when you first saw that document, & where, & when, & in what custody it has been since that time.

Ans. 15. My attention was first called to it soon after the date on which it appears to have been written by said McKay. It has remained in the office of the em. co. from that time until it was handed to the attorney of the company in this case.

Int. 16. Please examine another paper here produced & attach the same to your deposition as Exhibit F, & state in whose handwriting the same is; also, in whose handwriting is the endorsement on the back of it; when you first saw said paper, in whose custody it then was & has been since.

689 Ans. 16. I saw it first some time in 1865, in the hands of the aforesaid McKay. It was filed or endorsed by him as shown, & has remained in the office of the company from that time until recently, when it was handed to the att'y for the company in this case.

On account of the lateness of the hour, the further taking of this deposition is hereby adjourned to Monday, Ap'l 1st, at two o'clock p. m.

(Signed) GEO. H. LEWIS,
Notary Public.

Examination continued this 1st day of April, 1872.

Int. 17. State what expenses, if any, the American Emigrant Company paid under their contract for services rendered before that time to agents employed by or acting in behalf of Adams County.

(Objected to because immaterial in this inquiry, insufficient, incompetent, and calls upon its witness to testify as to the authority
690 of agents of Adams County without setting out their authority, and, further, in violation their contract with the county.)

Ans. 17. Under the contract with Adams County, the American Emigrant Company were to pay, as near as I can recollect, all claims against the swamp-land account of that county for which the county were then liable. After we had got a partial allowance from the gov-

ernment, several claims were presented by former agents of the county, claiming fees and commissions for services rendered. Among these claimants were Hon J. B. Grinnell, Hon. S. F. Cooper, and F. M. Davis, of Adams County. I remember to have made a settlement with J. B. Grinnell, paying him some twelve hundred dollars upon either a power of attorney that he had or an order from these other parties named, with whom he was associated, or from the board of supervisors of
Page, 691 Adams County. This settlement embraced claims upon Adams, and Montgomery Counties. This was on the 15 of November, 1866. I hereto attach receipt of J. B. Grinnell, marked "Exhibit G." This was the final payment to these claimants. Other payments had been made by F. C. D. McKay. As near as I can now remember, one payment was eight hundred dollars and another of five hundred dollars—all to Grinnell.

(Answer objected to as secondary, & rec'pt not stamped.)

Int. 18. State whether or not you have had any talk with Cooper since the date of said receipt and the payment of said twelve hundred dollars, and what he said in regard to the authority of Grinnell to receive pay in his behalf and make the settlement.

(Objected to for the reason that it seeks to elicit evidence which is immaterial, irrelevant, incompetent.)

Ans. 18. I remember to have had letters from said Cooper and afterwards a conversation in relation to this matter, subsequent to the
692 settlement with Grinnell, but such letters and conversation had reference to the settlement made and the amount paid Grinnell; but said Cooper raised no question as to the authority of said Grinnell to make the settlement.

Int. 19. State what, if anything, the American Emigrant Company has done, and what money it has expended, if any, in inducing and procuring emmigration to the State of Iowa; what number of emigrants it has brought into the State, where said emigrants have been settled; what efforts it has made, through its agents or otherwise, to induce such emigrants to settle in Adams County; whether such efforts were successful or not, and, if not successful, the causes thereof.

(Objected to as immaterial and irrelavant, and asks for the opinion of the witness as to success and philosophy, and not facts.)

693 Ans. 19. Immediately after contracting for these lands in Iowa, the agents of the American Emigrant Company in Europe were instructed by the company to direct emigrants to Iowa, and several special agents were sent to different parts of Europe from Iowa, to direct attention of emigrants to the advantages this State afforded, and particularly to these counties where we had purchased lands. A large number of emigrants were thus induced to settle in Iowa, to which tickets were furnished by the company. In the spring of '64 and '65 & '66, numerous colonies were found' of Swede and Norwegian emigrants, and agents of such colonies came to Iowa to inquire into the facts, and, going into Adams and many other counties to examine lands, were told by residents of such counties, but particularly in Adams, that the American Emigrant Company had no lands in that county to which
694 they could ever perfect their title, for the county had or would repudiate their contract with the company; and for this reason the efforts to settle emigrants in Adams County and several counties almost wholly failed.

In other counties that kept their contract in good faith with the American Emigrant Company, the company have settled large numbers of emigrants, selling only to actual settlers upon the lands pur-

chased of the company, and have continued to do so up to this time. Some forty thousand acres of land have thus been settled by the company. In order to obtain settlers, the company have sold lands thus purchased at from fifty cents upward per acre, and paid the expenses of special agents to Europe and a salary, and have given free tickets to large numbers from Europe to Iowa; and the settlement of such parties in Iowa, and particularly in the county named, has been defeated by the citizens and officials of such counties. The amount of money thus expended on account of Adams County I am not able to state.

695 I remember distinctly of a special agent being sent to Adams County and remaining there some time for the purpose of arranging matters with the county, so as to enable us to settle emigrants there, but without success, for the reasons before stated.

Cross-examination:

X-int. 1. What counties did you settle emigrants in, and how many in each county?

Ans. 1. I am unable to state particulars further than that we have sold up to this time of lands thus procured of counties about forty thousand acres, to settlers, and those counties that I have personal knowledge myself about are Monona, Carroll, Shelby, Audubon, Sac, Calhoun, and Kossuth. I have no personal knowledge as to emigrants in Adams County.

X-int. 2. What agent went to Adams County, and who told him the things that you have stated?

696 Ans. 2. J. S. Manghlin was the special agent. I only know from general report as to the county defeating the settlement of emigrants there, but do know that the fact was notorious that Adams County, through her citizens and officials, repudiated our contract and then every obstacle in the way of its being carried out on our part, as we have been threatened repeatedly with suits to annul our contract, from the time we procured a partial adjustment of their claims with the government.

Int 3. At what date did you first learn that Adams County was going to bring the suit?

Ans. 3. I don't remember the date only from common report.

X-int. 4. Where was it notorious that Adams County repudiated your contract, and name any person or persons who so informed you and the date of the information.

697 Ans. 4. I only know it generally from agents, and all our business relations with the county went to demonstrate that fact. I cannot particularize names.

X-int. 5. Name the agent or agents.

Ans. 5. J. S. Manghlin was one of our agents; Fredrick Nelson, our general Sweedish agent, was another.

X-int. 6. Where does Manghlin live and where does Nelson live?

Ans. 6. Manghlin is at present our agent in Monona County, and F'k Nelson formerly resided in Page County in 1863, and was sent as our agent to Sweeden, returning with a colony, either 1864 or 1865, made the tour of southwestern counties, among which are Adams; reported to me the facts about Adams as stated. He now resides as our agent at Chicago.

X-int. 7. What did M'r Manghlin tell you? & give the date.

698 Ans. 7. I have stated all that I can in detail about M'r Manghlin.

X-int. 8. Did you not have a resident agent in Adams County? Give his name and tell when he began and how long he acted for you.

Ans. 8. I can only remember that during M'r McKay's administration of the affairs of the company in this State, who had all to do with Adams County up to the time of his death, so far as regards a resident agent, that M'r Bixby, of Adams County, transacted considerable business for the company, as shown by his correspondence in the office, and I know nothing definite as to the terms of his agency.

X-int. 9. Did you ever pay F. M. Davis anything on those swamp-land claims at the time you settled with Grinnell or at any other time?

Ans. 9. I don't remember to have ever paid M'r Davis any-
699 thing in person myself, nor can I state positively that M'r Grinnell claimed to have received any portion of this money for him.

X-int. 10. Did you keep a copy of the papers from which Grinnell claimed to act?

Ans. 10. I don't remember that I did.

X-int. 11. Do you know of your own knowledge that Grinnell had any authority from the county to receive money?

Ans. 11. I know that either he or the parties named in that receipt (Exhibit G), some or all of them, appeared of record as agents of the county, and had authority to receive the money, which appeared to my satisfaction at the time, or I should not have paid him.

X-int. 12. Was he authorized by record of the board of supervisors to receive the money?

Ans. 12. I only know that by virtue of our contract with the county and the power of attorney, or whatever other paper, he had com-
700 pelled us to pay the money to him; further than this I cannot state.

X-int. 13. Did the emigrant company ever ask the board of supervisors of Adams County to decide whether the claim of Grinnell or those whom he represented was just and right?

Ans. 13. As to that I cannot tell; I have no recollection.

X-int. 14. When was it that J. S. Manghlin went to Adams County to make the settlement you speak of?

Ans. 14. As near as I can remember, it was in 1864 and 1865, and at different times thereafter.

X-int. 15. Was the indemnity-scrip allowed to Adams County in 1863 in one special certificate or more than one?

Ans. 15. I have no distinct recollection, but think it was all in one.

701 X-int. 16. What was that swamp-land scrip worth in cash in the market in 1864 & 1865.

Ans. 16. I think about fifty cents per acre. M'r McKay, the agent of the company, bought some at that price either in 1864 or 1865.

X int. 17. Did you make a case on the identical lands named in Exhibit F, package 11, of plaintiff's evidence before the Commissioner of General Land Office for $748\frac{79}{100}$ acres of land scrip?

Ans. 17. The claim of Adams County would appear of record as one case, and we had special hearing on each ruling that affected the different classes of this claim; to that extent we made a special case of the lands in that exhibit upon which that allowance was made.

X-int. 18. Did you make a special case of lands described in Exhibit F for which special certificate number 80 was issued?

702 Ans. 18. I don't remember about the particulars of that.

X-int. 19. Were the indemnity cash and scrip of Adams County allowed upon old proofs, or those you procured?

Ans. 19. After procuring a modification of the rule as to old proof, the old proof was acted upon to a certain extent, where it was not found too defective. How much of old proof or new was used in the adjustment of the claim I cannot tell without consulting the record at Washington.

X-int. 20. What form of proof did you use to secure indemnity upon those lands that you proved upon?

Ans. 20. The form of proof that we used is shown on pages 176, 177, & 178 of the report of the register of the State land-office of the State of Iowa, of November, 1865.

X-int. 21. What interest did each one of the agents and attorneys that you have named have in the emigrant company? How
703 much was each one paid? State the date of payment; also state whether the $32,000 that you paid includes the purchase-money paid to the different counties of whom you purchased swamp-land claims. State the names of the counties that you bought from, and how much you paid to each?

Ans. 21. I was a stockholder of the company to the extent of, I think, 500 shares of the stock of the company. M'r McKay was a stockholder, I think, in 1864 & '65, to the extent of 300 or 400 shares. M'r Brown was a stockholder at some time about that time of about an equal amount with McKay's. M'r Skinner never owned any of the stock. M'r Chamberlain was a small stockholder. Hains and Hooker were stockholders to a small amount. Ruggles never owned any stock. Whether Lyman was a stockholder or not at that time I am not able to say.

M'r. Skinner received $2,000 a year and something additional
704 for his expenses for several years. I was paid on an average for the time four to five thousand dollars a year when I devoted my entire time to the business. Messrs. Lyman, Ruggles, and Chamberlain were all of them attorneys, and were paid for their services as lawyers are usually paid in such cases. I remember to have paid in one settlement with M'r Ruggles $5,000, and at another time a few dollars less than five thousand dollars. M'r Lyman was paid in all fifteen to eighteen thousand dollars for services rendered in 1864, '5, '7, & '7, and in 1868 & '9, between five and six thousand dollars. I can't state what the others were paid, as their accounts were settled at Hartford, and can only judge from the aggregate of expenses, which I stated in my direct examination to be about $73,000, all of which was expended from 1862 to 1870, in the payment of fees to attorneys, and agents' traveling expenses & hotel bills at Washington, and in making
705 proof in Iowa. No part of the consideration paid the counties for their swamp claim on the government is embraced in this amount. It is impossible for me to answer the question definitely as to the amount of lands purchased of each county, for instead of purchasing lands we purchased claims on the goverment, out of which we realized sometimes scrip, then scrip and money, and in some cases neither, but a few tracts of vacant lands. The company contracted with sixteen counties.

X-int. 22. Was any part of the $73,000 paid to the government officers, clerks, agents, or parties connected therewith, either directly or indirectly, to procure or assist in procuring any allowance or modification of any order in relation to these swamp-land claims? If so, state the names of the persons and the amount and date of payment.

Ans. 22. I have no knowledge of any money embraced in that account having been so used as we were all honorable men.

706 X int. 23. How much money did a share in the Emigrant Company represent?

Ans. 23. The par value of a share was one hundred dollars.

X-int. 24. What was the capital stock of the company and how much was each stockholder required to pay down on each share?

Ans. 24. The authorized capital stock was a million dollars. I think six hundred and forty thousand dollars was paid up. I don't know what each stockholder was required to pay down.

X-int. 25. Was your stock issued to you directly from the company? and how much did you pay down per share?

Ans. 25. I can only say that some of it was issued to me by the company and some I purchased for money. I don't think I have any that has cost me less than 65 or 70 cents on the dollar, whether issued by the company or purchased outside.

707 X-int. 26. When was it that the Adams County proof was ruled out?

Ans. 26. The Adams County proof and all proof like it was rejected as insufficient and worthless, and so ruled upon by the department until we procured a modification of the rul'; how long it had been in the office, I do not now recollect. What I mean to be understood is this, that the rules of the dep't at the time that we made the purchase of this claim of Adams County made the proof refined & worthless, and was so treated at the department until we procured a modification of the rule admitting a portion of it.

X-int. 27. Did M'r H. L. Skinner keep the details of your business as clerk at Washington from 1862 to 1866?

Ans. 27. He did that portion of it relating to claims upon the government.

X-int. 28. Did Skinner know the disposition of the department
708 in the summer and fall of 1862?

Ans. That I cannot state. Suppose that he did.

(Signed) J. C. SAVERY.

STATE OF IOWA,
Polk County, ss:

I, S. S. Ethridge, a notary public, in and for said county, hereby certify that the foregoing deposition of J. C. Savery, commencing with the 17th interrogatory, by agreement of both parties, Frank M. Davis, att'y for the plaintiff, and Nourse & Kauffman, attorneys for the defendant, being present, and consenting that by reason of the illness of G. H. Lewis, the taking of the deposition should be continued before me, was taken before me, and reduced to writing at the office of Nourse & Kauffman, on the 1st day of April, 1872, and that at the said time and place I read over to the said J. C. Savery his entire entire deposition, and it was subscribed and sworn to by him before me, and in my presence.

In witness whereof I have hereunto set my hand, and affixed my notarial seal, at Des Moines, April 20, 1872.

[SEAL.] (S'g'd) S. S. ETHRIDGE,
Notary Public, Polk Co., Iowa.

709 STATE OF IOWA,
Polk County, ss:

I, Geo. H. Lewis, a notary public, in & for said county, hereby certify that the foregoing deposition of H. L. Skinner & J. C. Savery were

taken at the office of Nourse & Kauffman, Des Moines, Iowa, in pursuance to the annexed stipulation, beginning M'ch 28, 1872, & continuing from day to day until finished, said deposition to be read in evidence in a cause now pending in the circuit court of the United States, in which Adams County, Iowa, is plaintiff, & the American Emigrant Co. is def't, the said plaintiff appearing by its attorney, Frank M. Davis, & def't appearing by its attorneys, Nourse & Kauffman.

And I further certify that after the testimony of the said H. L. Skinner had been by me reduced to writing & read over to him, the same was by him subscribed & sworn to before me & in my presence, on the 30th M'ch, 1872, at the place aforesaid. And I further certify that the testimony of the said J. C. Savery was by me reduced to writing
710 as far as to & including the answer to the 16th interrogatory, but the further & full taking of the same by me was prevented by illness.

In witness whereof I have hereunto set my hand and notarial seal this 20th day of April, 1872, at Des Moines, Iowa.

[SEAL.] GEO. H. LEWIS,
Notary Public.

711 EXHIBIT A.

GENERAL LAND OFFICE,
June 23, 1860.

WARNER LEWIS, Esq.,
Sur. General, Dubuque, Iowa:

SIR: Refer'ing to your letter of 15th inst., asking to be advised as to your duty in reporting swamp selections in Iowa, and in view of the act of 12th of March last, a copy of which was furnished you in my letter of 21st ult. I will here set forth the principles which you are to apply to any selections now on your files, and to all others, also, which may hereafter be reported to you by the agent of the State.

1st. As the grant contemplates the inundation of extensive regions of country by such natural arteries as the Miss. River, the land evidently intended to be granted as swamp are those only which, by reason of their swampy character and liability to overflow, are worthless in their natural condition, and whence crops cannot be raised without reclamation by levies and drains. An overflow or inundation
712 from casual causes merely temporary in its effect, does not bring the land within the grant, and cannot be said in any proper sense to render them unfit for cultivation. The law contemplates such long continued overflow or freshets only as would totally destroy crops, and prevent the raising of them without artificial means by levees, &c., such as are found on the Mississippi River.

2nd. Bodies of land covered by shallow lakes or ponds which may become dry by evaporation or other natural causes, do not come within the meaning of the swamp grant.

3rd. Testimony, now after the lapse of nine years, to be available must be explicit resting upon personal and exact knowledge of the localities claimed, and must relate to each quarter, quarter section, or other equivilent legal subdivision. The testimony must be made by parties having no interest present or prospective, direct or indi-
713 rect, and must state the name of the river or water-course whereby the lands are submerged and rendered useless for arable purposes in their natural condition.

4. I enclose herewith a blank form of proof which you will require

from the State authorities, and if lists of land of this class are furnished you, accompanied with such evidence, you will report them to this office in the manner set forth in form B herewith, after making a careful examination of said proof, and rendering your own decision thereon as to whether the several tracts are swamp or not within the meaning of the grant.

5th. You will, as soon as your report is arranged and prepared for transmission to this office, send simultaneously a copy thereof to this local office of the proper land districts, with instructions to them to enter the tracts in the usual form in their books, and to withhold
714 them from sale or other disposition, unless otherwise especially directed by this office.

Very respectfully, your ob't serv't,

JA'S S. WILSON,
Commissioner.

EXHIBIT B.

GENERAL LAND OFFICE, *Oct.* 11, 1861.

Hon. CALEB B. SMITH,
Secretary of the Interior:

SIR: The claims under the swamp grants of 1849 & 1850 have now reached in round numbers nearly sixty million acres, and as claims are still coming before us for such lands, "in place" as well as for indemnity where sold or located by the United States, we have had the matter under examination with a view to determine whether the existing sales resting upon practice established under the direction of your predecessor are sufficiently effective to secure the ends of justice.

715 The following are the laws relating to the swamp grants:

1st. The act of March 2nd, 1849, vol. 9, page 352, chap. 87.

2nd. The act of September 28th, 1850, vol. 9, page 519, chap. 84.

3*t*d. The indemnity act of March 2nd, 1850, vol. 10, page 134, chap. 147.

4th. The renewed indemnity and conformitory act of March 3*t*d, 1857, vol. 11, pg. 251, chap. 117.

5th. The act of March 12th, 1860, page 3, chap. 5, act of 1860, limiting selections to land not disposed of by the government, and *in*stricting the persons in which selections are admissible.

The original construction given to the swamp grant by this office was under date of September 30th, 1851, in a letter addressed to the Secretary of the Interior, in which it was held as follows:

"In view of the large amount of money and land involved in these applications and others of like character that will be made by the other States interested in the grant, I have carefully examined the subject, and am of opinion that these grants must be regarded as taking
716 effect from the dates when the selections are reported to the proper officers and approved, and not from the date of the law. The act of 1849 states expressly, as you perceive by the words underscored, that on the approval of the Secretary the fee simple shall meet in the State, and the act of 1850 makes the fee to vest in the State on the issuing of the patent. The earliest period, then, that the grant can be considered as attaching to the land is that when the selections are made known as aforesaid and approved."

This was affirmed on the 2nd Oct., 1851, by Secretary Stuart.

Subsequently, however, under dat' of the 23 December, 1851, the same

functionary reversed his first ruling, and held the swamp a grant in presenti.

The effects of this reversal and decision was to treat this grant necessarily indefinite until rendered certain by actual selections as an effective operative present title.

The ordinary system of selling and locating laws was, of course, in full operation, sweeping over the public domain, and under that
717 system individuals not discriminating, and the local land-officers not having the data, in the absence of selections to discriminate, it followed that thousands of sales and locations were made, which afterwards agents representing the swamp States claimed to be swamp lands of prior date, and State property in virtue of the assured present grant by the acts of 1849 & 1850 to those States.

The result was that the general government was forced either to annul all such sales and locations, or to legislate a direct reversal of the said decision, or provide other means of relief. Hence the indemnity act of March 2nd, 1855, was determined upon as the proper remedy, although prior to its passage many such sales and locations had fallen to the ground. The effect of this act of 1850 was a general confirmation of all sales prior to its passage, and a grant of indemnity to the States in cash for the amount of such sales and in other lands for the area covered by locations.

718 Even prior to the passage of this act of 1855 numerous individuals applications reached this office denying in specified cases that the lands which had been selected as swamp were really such, and offering to prove it, and in the progress of events such contesting applications under oath reached by estimate three millions of acres. So accordingly investigations were ordered, the papers coming in by bushels. Numerous selections were proven to be dry lands, and canceled. Pending these proceedings Congress intervened by the said act of March 3td, 1857, qualifiedly confirming all the past swamp selections, and continuing indemnity to the States on account of prior sales, &c.; finally, however, followed by the said act of March 12th, 1860, forbidding the swamp grant from taking hold of any sold or located lands, and virtually affirming the principles of the afforesaid first decison of this office, dated September 30th, 1851.

719 Now we turn to the practice which has prevailed in respect to the mode of proof of the swampy character of lands. In regard to Michigan and Wisconsin, the rule agreed upon by the authorities of these States and the department have been this, that the descriptive notes connected with the *ways* should control. If these notes describe lands as swamp they was acknowledged as such. If not so described therein they were not selected or recognized. In the other States the selections were made by State agents, and filed in the office of the surveyor-general where such office existed, and were not *not* with the register and receiver, accompanied by affidavits in accordance with the circular herewith, dated November 21st, 1850.

In the progress of this business it became apparent that great abuses had arisen in making such selections through individual speculations, first, in the transfer by the States of their interests to counties, thence to individuals who procure and file ex parte proof. The proceed-
720 ings of the department show efforts to correct the same by more stringant regulations in that respect.

The act aforesaid, March 3, 1857, however, withdrew to a certain extent a large class of selected lands from executive investigation, closing down upon the matter by qualified recognition of the swamp selections

prior to that time. This office, however, exerted its power to the extent of its subordinate ability in subjecting such selections to as severe scrutiny as the printed regulations allowed, and in furtherance of this object laid down the stringent principles dated January 6th, 1860, copy A herewith. To this the late Secretary of the Interior replied September 15th, 1860, copy B herewith, holding as follows:

"The principal per cent., and that towards which Senator Sreen's oral objections were addressed with most face in this your instructions, seem to have been formed upon that construction of the act of September
28th, 1850, which regards that law as granting only such lands as
721 were both swamp and overflowed, and by the overflow rendered unfit for cultivation. It would appear to be a consequence that such lands could only be found in the vicinity of large streams liable to long-continued overflow at seasons of the year rendering the overflowed lands unfit for cultivation. This view I do not regard a' just and liberal. Whilst that may have been the original and restricted aim of ma'y friends of that law, who regarded it after its passage as so restricted in its effect, there were others who have always regarded that statute as granting all lands of which the greater part of any forty-acre subdivision in its natural state was wet and unfit for cultivation, either by reason of swamps or of the overflow of streams, and to redeem which to cultivation the construction of drains or levees would be necessary.
Either one of these causes singly, or both of them, conspiring to-
722 gether to render lands wet and unfit for cultivation, in my opinion brings the lands within the terms of the grant, and hence there may have been prairie swamp lands granted by the law as well as low overflowed bottom-lands."

"Such was the construction placed upon that law immediately after its passage, and under that construction it has been, I believe, thus far administered, and for this reason, if I regarded you' views on this point as correct, I should not be willing to change the construction in that respect after such lapse of time."

The practice which has since followed these instructions, in my judgment should be amended by the adoption of further means in order to place the character of all such selections beyond question or controversy. This is due alike to the States as well as United States. It is estimated that the quantity of land for which indemnity will be claimed in
cash or other lands will reach to 5,692,277$\frac{66}{100}$ acres. Surely such
723 immense interests should be subjected to the severest scrutiny. The States, as grantees, would not desire that their agents or assigns under color of the grant should succeed in claims not clearly allowed by said grant. The United States, as grantor, have a right to demand at our hands the utmost vigilence and scrutiny now pressed in these times of trial, as the government is by other obligations, to the end that not a dollar should be paid nor an acre granted not clearly shown to be a legal and just obligation.

To this end therefore I recommend the adoption of and a strict adherence to the principles laid down in the letter from this office of July 2, 1860, copy herewith, and where any case comes before department, that it be brought to the test of these principles.

In connection with the foregoing I now submit a report, No. 13392, on
a claim of the State of Iowa for refunding $86,006$\frac{93}{100}$, on ac-
724 count of lands claimed in said State as swamp, which have been sold by the United States as dry lands. The proof in printed form has been produced in support of this claim under the old ruling

and practice of the department; a specimen of it in printed form is herewith enclosed.

If the old rule prevails the account should be approved, but if not it should be subjected to the principles of the instructions of July 2nd, 1860, which is recommended. It is suggested if it should be deemed necessary to close the claim of all doubt that this office have the power to reward the list with orders for a special field examination, the expense to be paid out of the funds applicable to incidental expenses of district land offices.

With great respect, your ob't serv't,

J. M. EDMUNDS,
Commissioner.

725 EXHIBIT C.

Decision of the Secretary of the Interior in regard to indemnity proof on swamp lands submitted to him by the Com'r of the General Land Office.

STATE LAND OFFICE IOWA,
Des Moines, July 11th, 1862.

The following letter was received by his excellency Gov. Kirkwood, from the Commissioner of the General Land Office, and filed in this office on the 10 inst., embodying a decision of the Secretary of the Interior to the effect that the proof made out on the part of the State to obtain indemnity for swamp lands sold by the general government "is insufficient."

A. B. MILLER,
Register.

GENERAL LAND OFFICE,
June 30th, 1862.

His Excellency the Governor of Iowa, Des Moines, Iowa:

SIR: On the 9th ult. and 12th inst., t'o reports for cash indemnity under act of 2d March, 1855, for swamp lands in Louisa and Fre-
726 mont Counties, respectively, were submitted to the Hon. Secretary of the Interior for his approval of the decision made thereon as required by law if satisfactory to him. These cases were returned on the 27th inst., with a communication of the same date, referring to his letter of the 25th April last, upon which the instructions of the 31st ult. addressed to you were based.

The Secretary has made a re-examination of the subject, and has decided that the proof submitted is insufficient. He says:

"On the 25th of April last, in a communication to the Commissioner of the General Land Office from this department, a construction was given to the act of Congress of March 2d, 1855. According to the views then expressed, the proof furnished in the cases now under consideration is entirely insufficient. No court of justice would be justified in the passing the title to the most insignificant piece of property upon such evidence."

727 "Recurring to the communication of the 25th of April, the fact that these lands have been entered is prima facie evidence that they are not swamp and 'unfit for cultivation,' and if they have since been cultivated, and without having been reclaimed by a systematic process of embanking and ditching, there can be no claim against the government on account of the sale of such lands."

"Each tract alleged to be swamp lands must be described by witnesses, who can swear that they are acquainted with it, and if the' say it is swamp, they must give such reasons for their statement that will convince the Commissioner of the General Land Office that they are correct in their conclusions. It is perfectly easy to describe these lands; no difference whether they are made swamp by being upon the low margins of overflowed rivers, upon the borders of marshy lakes, natural swamps, lands overflowed by beaver-dams or lost creeks, all are alike within the act if thereby rendered unfit for
728 cultivation without the aid of artificial means. I' will readily occur to any one who shall attempt to make the proof that by describing and giving the names of the timber, shrubs, or plants found growing upon the lands alleged to be swamp will in most cases go far to determine their character.

"But lands covered by temporary shallow ponds, existing only in times of floods and storms, are not swamp lands. They must be so described that the Commissioner of the General Land Office can judge whether the lands are so permanently swamp or overflowed that they are absolutely unfit for cultivation, and that can be easily determined if the seasons and causes which it is supposed make the lands swamp are set out. It is known to every one of common observation, that many prairie lands, in their wild state, are covered with ponds, and timber lands with water for a considerable portion of the year, but when cleared and tilled, become dry without ditches and levees. What is
729 sought to impressed is, that unless the proof shows affirmatively that the lands are swamp, the claim must be rejected.

"A stereotyped form of proof will not answer. The topography of the country adjacent to the tract should be described, and if it is found to be situated upon the margin of a river with low banks, or on the borders of a marshy lake, you will have the less difficulty in determining the question; but if it is found to be in a region where there is no apparent reason to cause them to be swamp or overflowed, the proof should be more circumstantial and the condition of the lands should be described for a considerable length of time, that you may be sure that the overflow is not temporary.

"The certificate of the register and receiver of the district in which the lands are situated amounts to nothing at all; it is no part of their duty, and it is suggested that they be directed to take no part in
730 the matter, unless they shall be called upon by the Commissioner for information, for the purpose of detecting errors."

I have therefore to state the following as the requirements of this office in presenting claims for indemnity:

1st. Testimony in support of such indemnity awards must be the affidavits of at least two disinterested and respectable persons, who have a personal and exact knowledge of the character of the land claimed in its smallest legal subdivision as it existed at the date of the swamp grant of Sept. 28th, 1850, which affidavits must state the causes of swamp or overflow, designating the proportion of each tract that is claimed to be swamp and unfit for cultivation in its natural condition, with a description of the timber, the names thereof, and the shrubs or plants growing on the land, the character and extent of the means employed in levees, embankments, or drains in order to make
731 the land purchased as arable really inhabitable as such, the contiguity of the land to rivers, water-courses, or lakes, with a general description of the surrounding tracts, whether the land is subject to overflow, and at what seasons and extent, and whether by the

removal of the timber, or by plowing, the water disappears witho t ditching or draining.

2d. The proof should be the affidavit of the person who purchased the land of the United States, and also the affidavit of the present occupant. When the original purchaser is not resident of the State, or had no knowledge of the character of the land in 1850, or at the date of the purchase, or where the occupant is in like manner uninformed, or the tract is unoccupied, the facts may be established by two respectable and disinterested persons resident nearest the land, and in such cases
732 the State agent must with the testimony his own affidavit to the effect of the absence, want of information of the principal witnesses, or of the non-occupancy of the land, and that the persons whose testimony is presented are the nearest informed residents to the swamp premises, and are respectable, creditable, and disinterested witnesses.

3*d*. The affidavits may be made before a magistrate authorized to administer oaths, or before a notary public, under a seal; if by the former his official character must be certified under seal, and the character and credibility of the witnesses must also be certified by the officer administering the oaths.

The proof in the cases herein referred to, being similar to that submitted in other cases remaining on the files of this office, the Secretary's decision will apply equally to all, and they are all therefore rejected
733 as insufficient. These instructions are designed to supersede those of the 31st ult. and you will be pleased to acknowledge the receipt hereof.

With great respect, your obedient servant,

J. M. EDMUNDS,
Commissioner.

EXHIBIT E.

QUINCY, IOWA, *Sept. 7th*, 1864.

F. C. D. MCKAY:

I will sell to you all my interest in swamp lands & swamp land claims in Adams County, on United States, for six hundred and ten dollars, provided you accept this proposition and give me notice inside of thirty days from this date.

Items of my claim:

1st. County scrip for $168\frac{26}{100}$ acres.

2nd. My part of scrip on county claim on U. S.

3*d*. My per cent. of cash claims on U. S., if accepted, to be paid for within one month after notice.

Yours truly,

FRANK M. DAVIS.

Quincy, Adams Co., Iowa.

I agree to accept or refuse the claim offer within the time stated & if I accept, then to pay fee & take assignment of the claim.

F. C. D. MCKAY.

734 EXHIBIT F.

QUINCY, *March 15th*, 1865.

DEAR SIR: I have a claim of twenty per cent. upon swamp land scrip issued to Adams County, which is unadjusted. I understand the said co. have lifted the scrip and located it. I also have a claim of $7.20

for 72 notary certificates at 10 cents each, to affidavits concerning swamp lands procured by M'r Manghlin. I desire the claims adjusted & settled.

Quincy, Adams County, Iowa.

I am yours truly,

(S'g'd) FRANK M. DAVIS.

F. C. D. McKAY,

735 *Des Moines, Nov. 15th,* 1866.

G.

Memorandum of settlement made this day between Hon. J. B. Grinnell & the American Emigrant Company & J. C. Savery.

Whereas Samuel F. Cooper & David Ellison contracted with the counties of Page, Adams, & Montgomery, State of Iowa, to prosecute the swamp land claims of said counties as shown by this contract with said counties; now, therefore the said J. B. Grinnell, for and in behalf of said Cooper & Ellison, for whom he claims to have full legal authority by power of attorney to act, hereby acknowledges full & entire satisfaction upon the receipt hereof of twelve hundred dollars in hand paid (ballance having been paid at a previous date) by the said American Emigrant Company, which is to be in full satisfaction of all claims upon said counties and the American Emigrant Company.

J. B. GRINNELL.

736 (Endorsed:) Adams Co. vs. The America Emigrant Co. Deposition of H. L. Skinner, J. C. Savery. Filed May 6, 1872. George B. Corkhill. Nourse & Kauffman, attorneys for def'ts. Notary's fees $17.00. Paid by def't. Geo. H. Lewis, notary.

737 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
May, 1872.

I, Willis Drummond, commissioner of the General Land Office, do hereby certify that the annexed paper marked "A," containing two pages is a true and literal copy of an affidavit filed in this office by the State of Iowa to obtain indemnity under act of March 2, 1855, for land disposed of by the U. S. in Adams County, Iowa, for land warrants and scrip, and that said affidavit is filed with the indemnity case numbered 181 for the State of Iowa. And that the annexed paper marked "B" is a true and literal copy of swamp indemnity certificate No. 80, by which an award is granted to the State of Iowa under act of March 2, 1855, based on proof filed with indemnity case No. 181; and that the annexed paper marked "C," containing three pages, is a true and literal copy of the record of a stated account between the United States and the State of Iowa, under act of March 2nd, 1855, for lands in Adams Co., Iowa, sold by the United States for cash, based on proof filed in
738 this office with indemnity case No. 181 for Iowa, submitted by the Commissioner of the General Land Office to the Secretary of the Interior, by him approved and transmitted with vouchers, to the Frst Comptroller of the U. S. Treasury.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office be affixed at the city of Washington, the day and year above written.

[SEAL.] WILLIS DRUMMOND,
Commissioner.

Fees reqqired by law, $4.50.

739 A.

Swamp land indemnity proof, under act of March 2, 1855. Warrant location.

STATE OF IOWA,
Adams County, ss:

A. A. Nolan and W'm Query, of the county of Adams and State of Iowa, being each severally and duly sworn, depose and say, that we have personal and exact knowledge of the character of the following-described tract of land, in its smallest legal subdivision, to wit: SW. ¼ of SE. ¼ of section 23, in township 72 north, of range 33 west of the 5th P. M., Iowa, containing 40 acres and hundre'ths of an acre of land, and which they are informed and believe was located on the 18th day of May, 1854, by one Tho's C. Kennedy, with military bounty land warrant No. 95206, acts, for which he received certificate No.
They further say that the greater part of each forty-acre tract of said land was, on the 28th day of September, 1850, and is still, swampy, or subject to such regular or periodical overflow, either at the planting, growing, or harvesting season, as would materially injure or destroy a crop; and as such rightfully enure to the State of Iowa, under the provisions of an act of Congress, approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to redeem
740 their swamp lands within their limits." That we have no interest in this claim. That we know, at the time of said grant, all that part of the above-described tract of land, to wit:

All being at least all acres of each quarter quarter section of said tract, was and is unfit for use and cult'vation in its natural state and condition, or arable or really inhabitable, as such, without the following or other artificial means being employed, to wit, ditching & en-banking.

That the swampy character of said land is caused by overflow of East Nordway & water from uplands.

That the same is not caused by showers or occasional fall or overflow of water so rarely as not to render said swampy land unfit for cultivation, but such swampy character is a permanent characteristic of said premises. That the water is of the depth to saturate it on said swampy or overflowed portions during such seasons of the year as prevents the growing of crops thereon, unless rendered fit for use in the man-
741 ner above stated. That said water is of the depth aforesaid during the summer season of the year. That there is some timber growing on said premises on east line, scattering. That the shrubs and plants usually growing on said land are slough-grapes. That neither the removal of the timber from said premises nor the plowing thereof will render said land, or any part of it, above stated to be wet and swampy, fit for cultivation, without employing also the other artificial means above stated as necessary, or other like means. That the surrounding tracts near said premises are low on all sides; all of which, as well as the reasons why we make this affidavit, will more fully appear by our several answers to the questions in print hereinafter contained, to wit:

1st. What is your age and occupation?

Answer. A. A. Nolan, age 28 years, & surveyor. W'm Query, age 40 years, & farmer.

2nd question. What are your means of knowledge of the character of this land?

Answer. Personal examination.

3rd question. What particular part of this is overflowed or swampy?

742 Answer. All.

4th question. What is the cause, depth of water, and extent of the swampy or overflowed character of this land?

Answer. Water from uplands, & overflow of East Nordway, & extent of all.

5. Question. What is the character of the trees, shrubs, plants, grasses, &c., growing on this land?

Answer. Some scattering timber on east line, and slough grapes

6. Question. What is the topography of this and adjoining lands?

Low on all sides.

7. Question. State whether any part of this tract is under cultivation, and, if so, what means have been employed for reclaiming the same.

Answer. No.

8. Question. Would the water and swampy character disappear by clearing *by clearing* off timber, or by cultivation of the premises, without ditching, embanking, or draining?

Answer. No.

9th question. If this land is occupied by any person, state whom,

743 and where, if you know, is the person who entered the land, and had he any knowledge of the character of the land as the time he entered the same?

Answer. No; & T. C. Kennedy is non-resident.

10th question. State whether the country about is thinly or thickly settled, and why you are better acquainted with the land than those residing nearer, if such is the case.

Answer. Thinly settled.

(S'g'd) A. A. NOLAN.
W'M QUERY.

Subscribed and sworn to before me by A. A. Nolan and W'm Query, this 22 day of June, A. D. 1866.

In testimony whereof witness my hand and seal of office.

[SEAL.] (S'g'd) JOHN BIXBY,
Clerk District *Adams County, Iowa.*

We, the undersigned, being personally acquainted with A. A. Nolan and W'm Query, by whom the foregoing affidavits are signed, do certify that they are respectable men, and fully entitled to credit.

(S'g'd) JOHN BIXBY,
W'M E. McDUFFER.

744 STATE OF IOWA,
Polk County, ss:

I, J. E. Hull, agent for Adams County, Iowa, being duly sworn, depose and say, that A. A. Nolan and W'm Query, the two witnesses who have subscribed and sworn to the foregoing affidavits, are the nearest informed residents to the premises in said affidavit described, and that each of said witnesses is respectable, credible, and disinterested. That the reason why Tho's C. Kennedy, who entered said premises, or purchased the same originally of the government, does not make his affidavit in this matter is, he is a non-resident to the knowledge and belief of the deponent. That said premises are not occupied.

(S'g'd) J. E. HULL.

Subscribed and sworn to before me, Ira Cook, of Polk County, this 13 day of July, 1866.

In testimony whereof witness my hand and seal of office.

[L. S.] IRA COOK,
Notary Public, Polk County, Iowa.

745 B.

Swamp indemnity certificate No. 80.

It is hereby certified that on testimony presented to the department, the Secretary of the Interior on the 16th day of August, 1866, approved an award of two hundred acres to the State of Iowa, as swamp-land indemnity under the act of 2nd March, 1855, that quantity shown by said testimony to be swamp having been disposed of as public land by the United States in bounty-land locations, and scrip in the county of Adams and State aforesaid.

Now, therefore, be it known that, in virtue of said approval under the act aforesaid, the State of Iowa is entitled to select a like amount in legal subdivisions within the limits of said State, if found vacant, public lands subject to entry at one dollar and a quarter per acre, and to which there are no adverse rights.

The register and receiver of the proper land-office, upon the filing with them of authority by the duly constituted agent of the State, will
746 permit said agent to file his application to be signed by him and attested by the register and receiver, designating such selections as he may make, and if found correct in all respects they will so certify at the foot of said application, and then enter them up accordingly on the plat and tract books, and transmit to this office a certified transcript of such application, observing to certify in the form No. 1 hereto appended the exact quantity of selections first made; and so in like manner as each successive application is filed, the register and receiver will attach a similar certificate No. 2, and so on, taking care that the aggregate shall not exceed the quantity allowed by this certificate, and embrace none but vacant public lands subject to entry at one dollar and a quarter per acre.

All the selections in a given district should be made at one and the same time, and when the complement herein allowed is made up this certificate must be surrendered to the land-officers, to be by them returned to this office.

Given under my hand and the seal of the General Land Offie, this 18th day of August, 1866.

747 [L. S.] (S'g'd) JOS. S. WILSON,
Act'g Commissioner.

No. 1.] LAND OFFICE,
Fort Dodge, Sept 30th, 1866.

, the duly authorized agent of the State of Iowa this day filed under the foregoing certificate selections of land subject to such selection in this district amounting to .

C. B. RICHARDS,
Register.
CHA'S POMEROY,
Receiver.

No. 16600. Adams County, Iowa.

GENERAL LAND OFFICE,
August 21, 1866.

SIR: I have stated an account between the United States and the State of Iowa, under the provisions of the act of Congress approved March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," as follows, viz:

COUNCIL BLUFFS DISTRICT.

Certificate.	Purchaser's name.	Date of purchase.	Part of section.	S.	T.	R.	Acres.	Price.	Amount.
		18 Mar., 1854	S.W. ¼ of N.W. ¼	18	72	32	35.67	$1.25	44 58¾
1664	Richard Edwards	11 May, "	S.W. ¼ " N.E. ¼	18	"	"	40	" "	50
2065	John Query	27 " "	N.E. ¼ " S.W. ¼	33	73	"	40	" "	50
2325	W'm Engle	18 Mar., "	S.E. ¼ " S.E. ¼	23	72	"	40	" "	50
1660	L. V. Reckey	10 May, "	W. ½ " N.W. ¼	24	"	"	80	" "	100
2240	S. F. Gose	24 July, "	N.W. ¼ " N.E. ¼	36	"	"	40	" "	50
3160	Tho's C. Kennedy	11 May, "	N.E. ¼ " N.W. ¼	26	"	"	40	" "	50
2066	F. A. Nolan	22 July, "	N.E. ¼ " N.E. ¼	28	"	"	40	" "	50
3146	W'm Robinson	" " "	N.W. ¼ " N.E. ¼	28	"	"	40	" "	50
3147	George Robinson	26 May, "	S.E. ¼ " N.E. ¼ &	6	73	33	120	" "	150
2286	W'm O. Howard	" " "	N.E. ¼ " S.E. ¼ &						
"	Same	" " "	S.E. ¼ " S.E. ¼	10	71	35	40	" "	50
"	Same	27 " "	N.E. ¼ " S.W. ¼	17	71	35	80	" "	100
2317	Daniel D. Hart	31 " 1853	W. ½ " S.E. ¼						
183	Thomas Thompson								
	Amounting						635 67		$794 58¾

749 GENERAL LAND OFFICE,
August 21st, 1866.

I hereby certify I have carefully compared the foregoing list with the original certificates of purchase designated therein, and find the description of the several tracts, the date of purchase, the area, price, and amount correctly stated, also the official examination as certified by the head of the swamp division in regard to the swampy character of the land, and the right to indemnity is on file in this office bearing date August, 1866.

W'M F. WALLACE,
Ex. Clerk.

And I do hereby certify that the above-described tracts, situated in the State of Iowa, were duly selected and claimed by the State as swamp land, and have been *been* disposed of by the United States, and that due proof has been filed in my office, showing that said tracts were swamp lands within the intent and meaning of the act of Congress approved Sept. 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits;" there-
750 fore, the said State of Iowa is entitled to receive the said sum of seven hundred and ninety-four dollars and fifty-eight cents ($794.58), as indemnity according to the provisions of an act of Congress approved March 2nd, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands."

Very respectfully, your ob't serv't,
(S'g'd) JOS. S. WILSON,
Acting Commissioner.

Hon. JAMES HARLAN,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
August 31st, 1866.

The foregoing decision of the Commissioner of the General Land Office is hereby approved.
(S'g'd) JAMES HARLAN,
Secretary.

751 GENERAL LAND OFFICE,
October 2, 1866.

SIR: I hereby certify that I have examined and adjusted an account between the United States and the State of Iowa, and find that the sum of seven hundred and ninety-four dollars and fifty-eight cents ($794.58) is due from the United States to the State of Iowa on account of lands selected by said State as swamp or overflowed, under the provisions of the act of Congress approved September 28th, 1850, and erroneously sold by the United States, payment for which is demanded under the provisions of the act of Congress of March 2nd, 1855, and which sum is so due for the lands described in the foregoing list, as appears from said list, and the vouchers herewith transmitted for the decision of the First Comptroller of the Treasury.

Very respectfully, your ob't serv't,
(S'g'd) JOS. S. WILSON,
Commissioner.

Hon. R. W. TAYLER,
First Comptroller of the Treasury.

752 (Indorsed:) Adams County vs. American Emigrant Co. X. Defendant's evidence. Documentary copy of proof.

(Endorsed:) Filed May 10, 1872. George B. Corkhill, clerk.

753 In U. S. circuit court, dist. of Iowa.

ADAMS COUNTY
vs.
THE AMERICAN EMIGRANT COMPANY.

It is stipulated and agreed that the clerk need not transcribe or transmit to the Supreme Court, as evidence in this cause, the report of the Commissioner of the General Land Office of 1862, nor the report of the Secretary of the Interior of 1864–'5, as the portions thereof put in evidence appear in the depositions of H. L. Skinner; and that of the report of the register of the State land office of the State of Iowa, except the extracts hereto attached, being portions put in evidence by defendant, and certified up as testimony in said cause; and also the extracts from the report of register of the State land office, marked Exhibits A, B, C, hereto attached, introduced by plaintiffs in evidence and referred to in the arguments of said cause on the final hearing and determination thereof, July 23d, 1875.

FRANK M. DAVIS,
Counsel for Plaintiff.
754 J. A. HARVEY,
Of Counsel for Respondent.

Extracts from report of the register of the State land office of Iowa, 1865. Page 81, et seq.

Notwithstanding the lapse of fifteen years since the passage of the act, this grant is not only far from being settled, but the prospect for a speedy adjustment is not as flattering as could be desired.

The legislation of the State has been extensive, and in some instances unnecessary. But the difficulty in the administration and adjustment of the grant is not attributed to that *part*. But to the course persued by the land department at Washington is to be attributed the difficulty encountered in the administration and adjustment of the grant—a course that seems all the while to be marked with the most determined and persistent hostility to the interest of the State.

755 The act requires the Secretary of the Interior to make out lists of the swamps lands, and transmit them to the governor' of the States; but he *pre*mitted the States desiring to do so to ascertain by examination in the field which were the swampy and overflowed lands. The State made her selections by agents appointed for that purpose, who proceeded to survey, list, and report the lands according to forms and instructions furnished by the department; but before the selections were all made, and while the lists for a number of counties were awaiting the action of the department, to wit, on the 23rd of June, 1860, the Commissioner of the General Land Office changed the ruling and required a different form to be observed for the affidavit or certificate of the soliciting officer, one difficult if not impossible to comply with. (Appendix No. 7, s. 8.)

756 The selections for O'Brien and some other countries, sworn to in the form and manner prescribed and formerly received and recognized as sufficient, were rejected. The rejected reports were returned by the State to the Surveyor-General, to await the result of an effort to procure a modification of the form. No modification has yet been effected, and these selections still stand rejected. *The rejected reports were returned by the State to the Surveyor-General, to await the result*

of an effort to procure a modification of the form. No modification has yet been effected, and these selections still stands rejected.

By reference to a few other divisions and acts of the department (which it is proper to notice, both in vindicating the State and giving a correct history of this matter), it will become apparent that the State of Iowa is to lose a large amount of lands, and particularly a large claim for indemnity, to which she is entitled under the swamp-land grant, and comparatively to receive but little benefit; whereas other States (especially the Southern States) have been *jointly* dealt by in the administration of this grant.

757 The original construction given to the act of 28th Sept., 1850, was that it was not a present grant, and did not attach to nor affect the land till it was selected and reported to the proper officer for approval, and that the title thereto did not vest in the State till the patent therefore was issued. This was the holding of the department under the decision of Secretary Stuart, up to 23d Sept., 1851, when he reversed his decision, and held that the act was a grant in presenti.

This is the correct construction, as has been decided by our supreme court in the case of Allison vs. Halfacre (11 Iowa, 450; see also opinion of Att'y-Gen'l Black, appendix No. 9), and has been acqu'es'ed in by the government to the present.

The act being a grant in presenti, conveyed to the State at the time of its passage all lands comming within the description of the grant. Notwithstanding that fact, the ordinary system of selling and locating the public lands at the various government land offices continued

758 in full operation. The result was that thousands of entries and locations were made of lands that were afterwards selected and claimed as swamp lands. Here arose a serious difficulty, for the government having parted with her right and title to the lands by the act of Sept. 28, 1850, she had no right to dispose of them again, and hence the title she might make to these locators and purchasers would be void. It therefore become necessary to withdraw all the public lands from sale till the swamp-land selections were completed, or to declare these entries and locations void, or to provide some means of relief for those purchasers and locators.

Congress provided relief by the passage of the act of March 2, 1855, affirming those sales and locations and granting to the States the indemnity provided for by that act. The act provides that upon due proof by the authorized agent of the State before the Commissioner of the

759 General Land Office that any of the lands purchased were swamp lands within the true interest and meaning of the act aforesaid, (Sept. 28, 1850,) the purchase money shall be paid over to the State, and where the lands have been located by warrant or scrip the State shall be authorised to locate a like amount upon any of the public lands, &c.

The form and substance of proof to be furnished by the State of Iowa, to entitle her to indemnity, under the provisions of said act, were agreed upon in 1859, between his excellency Ralph P. Lowe, then governor, and the Land Department at Washington. The State, at great expense, proceeded to furnish, through its agents, a large amount of proof in the form and substance agreed upon, showing the character of many of the lands selected as swamp-lands, and disposed of by the government since the 28th Sept., 1850, to be such as was contemplated by the act of that date, but no sooner was this done, and the in-

760 structions fully complied with in the premises, than the Department repudiated these proofs, and prescribed a new and different form of proof, with an evident design to render a compliance therewith

impossible, for under these new instructions it is believed not one acre in ten already selected can be secured to the State. (Appendix 10 & 11.)

This adverse decision was rendered on the 27th June, 1862, while many counties were getting up and forwarding proof according to the old form.

No. 10, Appendix, referred to in the above extract, is the same as Exhibit C, in the deposition of H. L. Skinner; and No. 11, in the appendix to said report, referred to in said extract, and also referred to in the deposition of said witness, (int. 7,) is as follows, to wit:

Number 11. *Indemnity proof—New form— Warrant location.*

STATE OF IOWA,
County, ss:

761 We, and , of the county of , and State of Iowa, being duly sworn, on oath depose and say, that we have a personal and exact knowledge of the character of the following described tract of land, in its smallest legal subdivision, to wit: of section in township north, of range west, of the fifth P. M., containing acres of land, and which was located on the day of , 18 , by , with bounty lands warrant No. , and for which he received certificate No. .

We further say that the greater part of each forty-acre tract of said land was, on the 28th of September, 1850, and still is, swampy, or subject to such periodical overflows, either at the planting, growing, or harvesting season, as would naturally injure or destroy a crop; and, as such, rightfully enured to the State of Iowa, under the provisions of an act of Congress, approved September 28, 1850, entitled "A' act to enable the State of Arkansas, and other States, to reclaim the swamp lands within their limits."

762 That we know that at the time of said grant all that part of the above described tract of land, to wit, , being at least acres of said tract, was and is unfit for use or cultivation in its natural state and condition, and not arable or really inhabited, as such, without the following, or other artificial means, being employed, to wit: (Here describe the means necessary to reclaim the land.) That the swampy character of said lands is caused by (state the cause of swampy character.) That the same is not caused by showers or occasional fall or overflow of water so rarely, as not to render said land swampy and unfit for cultivation; but such swampy character is a permanent characteristic of said premises; that the water is frequently of the depth of on said swampy or overflowed portions during such seasons of the year as prevents the growing of crops thereon, unless rendered fit for

763 use in the manner above stated; that the water is frequently of the depths aforesaid during the seasons of the year; that the shrubs and plants usually growing on said land are: (Describe the vegetation.) That neither the removal of the timber from said premises, nor the plowing thereof, would render said land, or any part of it, above stated to be wet and swampy, fit for cultivation, without employing also the other artificial means above stated as necessary, or other like means; that the surrounding tracts, near said premises, are: (Describe surrounding country.)

All of which, as well as why we make this affidavit, will more fully appear by our several answers to the questions hereinafter contained, to wit:

Question 1. What is your age and occupation?

Question 2. State fully your means of knowledge of the lands above described.

764 Question 3. What particular part of the land is overflowed or swampy?

Question 4. What is the cause of such swampy or overflow character?

Question 5. What is the character of the shrubbery on this and surrounding tracts?

Question 6. Give the topography of this and surrounding lands.

Question 7. State the reasons, and the depth of water, and the extent of said overflow or swampy character.

Question 8. If any part of said land is under cultivation, state which, and the means employed for reclaiming the same.

Question 9. Would the water and swampy character of the land disappear by clearing off timber or by cultivation of the premises, without ditching, embanking, or draining?

765 Question 10. If the land is occupied, state by whom, and where, if you know, is the person who entered the land, and had he any knowledge of the character of the land at the time he entered the same?

Question 11. State whether the country about is thinly or thickly settled, and why you are better acquainted with the land than those residing nearer, if such be the case.

(Answers required to all these questions in their order.)

Subscribed and sworn to before me by and in the county of , State of Iowa, on this day of , 186 .

In testimony whereof witness my hand and seal of office.

[L. S.]

Notary Public.

766 EXHIBIT A.

Harvey's report, page 76.

Since soon after the last session of the general assembly, however, there has been but one general agent, W'm Baker, esq., of Louisa County, who has been all the time at Washington urging the claims of the State to settlement, as rapidly as the tardy machinery of the land department can be induced to move.

767 EXHIBIT B.

Harvey's report, pages 84, 86, 87.

At the interposition of our delegates in Congress the Secretary reviewed and so far changed his decision as to receive and consider all proof for indemnity filed in the General Land Office prior to the 27th June, 1862, but all filed subsequent to that date must conform to the new instructions, thus making it necessary to retake a large amount of proof, at great expense to the counties.

Again, after our agent, pursuing the matter with commendable energy, had got this business started, and the department was "working up" these claims, with show of ultimate success, the Commissioner of the General Land Office was in some way notified that fraud had been perpetrated in the selections made in Dickinson County.

768 He thereupon appointed a special agent, on the 20th of March last, to visit that county, examine the land, and report the result of his observations.

On the 26th and 27th of May said agent wrote the Commissioner, alledging that fraud had been committed in said county, and stating in substance in his letters "that of fifteen tracts that day examined by him, which had been selected, nine could not in any sense be claimed as swamp land; that some of it is high, dry, and arable, and in successful cultivation, and among *and among* the best lands in the country;" and giving it as his opinion that great injustice had been done the general government in the selections of swamp lands in this State.

But of all the adverse decisions of the department the one fraught with the greatest injury to the State of Iowa is one cutting off all claims for indemnity in counties where the swamp land selections were made, after the 3rd of March, 1857. It is a notorious fact that
769 many of the counties were not in a condition to make their selections prior to that date, nor is there anything in the grant nor any subsequent act of Congress making it necessary.

It seems that the Commissioner of the General Land Office called the attention of this office to this subject as early as May 31st, 1862, by the following letter:

GENERAL LAND OFFICE,
May 31, 1862.

A. B. MILLER, Esq.,
Register of State Land Office, Des Moines, Iowa:

SIR: Your letter of the 16th inst., addressed to the Hon. Secretary of the Interior, has been referred to this office, and, as a reply thereto, I have to state that no indemnity is provided to the States for swamp lands disposed of by the general government, unless the lands shall have been duly selected, and reported to this office, as swamp
770 lands, on or prior to the date of the act of March 3d, 1857.

Very respectfully, your obedient servant,

J. M. EDMUNDS,
Commissioner.

This letter was followed by others to various State agents of similar impart. And it seems that the Hon. Commissioner has officially decided the question as indicated in the foregoing letter, in a case made up by the American Emigrant Company for Wright County in this State. Wright County made her selections since the 3d of March, 1857, and the American Emigrant Company, assignee of Wright County, and standing in the position of the State of Iowa in the controversy, presented to the Commissioner of the General Land Office proof made out in conformity with the recent and more strict instructions and form for indemnity for about 9,000 acres of swamp land located since the 28th of September, 1850.

The indemnity was refused by the Commissioner, and the com-
771 pany have appealed to the Secretary of the Interior. They have prepared and printed an elaborate argument, (a copy of which furnished me by the company I herewith submit,) (see appendix, No. 12,) presenting this whole question and showing conclusively that under a fair construction of the acts relative to this grant, the State is entitled to indemnity for all swamp lands disposed of by the government since Sept. 28, 1850, whether the selections were made since or prior to the 3d of March, 1857.

Of this policy of the department cannot be changed, the State had better give up a large share of her claims under this grant, and avoid any further expense and trouble in reference thereto.

772 EXHIBIT C.

Harvey's report, page 88.

It was through the efforts of our members of Congress, in response to the memorial of the legislature of July 12, 1856, and joint resolution of December 18, 1856, that the act of the 3d of March, 1857, was passed, and the State was saved from the fatal results following the then ruinous policy of the department in permitting contests before the Land Office as to the character of land already selected and returned as swamp land.

A similar early and earnest effort may prove of incalculable advantage to the State.

Early in the administration of this grant, the department seemed to receive the impression that Iowa was acting in bad faith; that she had selected a large amount of dry lands, and that, as if conscious of being in the wrong, and wishing to avoid difficulty with the general
773 government, she had transferred her interest to the counties, and the counties to private speculators and land-sharks, who, by means of this grant, are endeavoring to perpetrate a gigantic fraud upon the general government.

I say such seems to have been and still to be the impression at the department at Washington; and to its prevalence in a great degree, if not altogether, may be attributed the difficulty we there meet with.

(Endorsed:) Filed Sept. 20, '75. George B. Corkhill, clerk.

774 Afterwards, to wit, on the 27th day of October, the same being of the October term, 1873, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, October term, 1873. Wednesday, October 27, 1873.

ADAMS COUNTY
vs.
AMERICAN EMIGRANT CO. } No. 168. Eq.

This cause coming on for hearing, was continued under advisement by the court.

775 Afterwards, to wit, on the 31 day of October, the same being of the October term, 1874 of said court, there appears in the records of the proceedings thereof in said cause the following decree, to wit:

United States circuit court, district of Iowa, October term, 1874. Saturday, October 31, 1874.

ADAMS COUNTY, COMPLAINANT,
vs.
THE AMERICAN EMIGRANT COMPANY AND Andrew G. Hammond, John Hooker, and Henry K. N. Welsh, trustees of said company, defendants. } No. 168. Eq.

This cause came on to be heard at this term of this court upon the

pleadings and proofs shown by stipulation filed, and was argued by the counsel for the respective parties, and thereupon in consideration
776 thereof, it was by the court now present ordered, adjudged, and decreed that the contract in writing between the American Emigrant Company and the said county of Adams, complainant, made and entered into on or about the 3rd day of September, 1862, by the supervisors of said county and the said American Emigrant Company, for the sale of the swamp lands and swamp-land interests of said county set out in complainant's bill, be set aside, annulled, and cancelled and held and declared inoperative and void and without force, effect, validity or obligation.

And it is further ordered, adjudged, and decreed by the court that the deed for the swamp lands and swamp-land interests of said county of Adams, made & executed by the board of supervisors of said county to the defendant, the American Emigrant Company, on or about the 7th day of September, A. D. 1863, and referred to in complainant's bill, and by copy appended thereto, be in all things set aside, an-
777 nulled, and cancelled, and that the same be held inoperative and void, and without force, effect or validity or obligation, and to pass no title to the said American Emigrant Company to the lands therein described.

And be it further ordered, and adjudged, and decreed that the title to all indemnity lands located with scrip issued by the United States upon the claim of said Adams County, is held by said county of Adams free from all right, claim, or equity of the said American Emigrant Company, except that purchasers in good faith from said company of any of said lands shall be protected as hereinafter provided.

It is further ordered and adjudged that the American Emigrant Company shall account to the said county of Adams for all cash indemnity received by said company from the United States under said contracts hereinbefore set aside, and shall also account to said county of Adams for all purchase money received from the sale of any of said
778 lands, and all notes, bonds, and mortgages held by them, or remaining unpaid, that formed in whole or on part the consideration for any such sale or contract of sale, and that the county of Adams, complainant, shall fully execute all contracts of sale so made by the American Emigrant Company in good faith for any of said lands upon the receipt of the purchase money, or the payment of the bonds, notes, and mortgages, severally, and full performance of conditions of said contracts, and shall be held to execute deeds to the purchasers in the same manner as though said contracts were originally between said county and the said purchasers severally.

It is further ordered and adjudged that the county of Adams shall account to the American Emigrant Company for the money paid to said county or its agents, under the contract, or upon the consideration of the sale and transfer of its swamp land and swamp-land in-
779 terests, and also for all taxes paid by the said company upon such lands, and also for all money properly and reasonably paid out by said company in the survey, selection, or making proof on said swamp lands, except that said complainant shall not be chargeable with, nor shall be required to account for, any expenses incurred by def't in the employment of attorneys, agents, or clerks in the prosecution of said claim at Washington City before the Department of the Interior.

It is further ordered and decreed that J. M. S't John, esq., be appointed a special master and commissioner to take an account, under the provisions of this decree, and to ascertain—1st. A description of all

the aforesaid swamp or indemnity lands sold in good faith by said American Emigrant Company, and report a list of the same to this court. Second. To report what sums have been paid to the said American Emigrant Company on account of such sales, and the date of payments. Third. To report what sums remain unpaid, and the character, date, and amount of securities held by the American Emigrant
780 Company for the consideration in whole and in part for such sales; to report what reasonable expenses and commissions have been incurred, if any, in making said sales, by the American Emigrant Company; to take an account of all moneys received by the American Emigrant Company from the United States as cash indemnity under said contract, and the date of the same; to take an account of all moneys paid by the American Emigrant Company to the county of Adams under said contract, or as consideration for said deed of conveyance and date of payment; to take an account of all money properly and reasonably paid by the American Emigrant Company for selection, survey, or making proofs of swamp lands under said contracts, or to agents theretofore employed by the county, with date of payments, except no account shall be taken of expenses incurred at Washington, as hereinbefore specified; to take an account of all taxes levied on
781 said land and paid by the American Emigrant Company, and the date of payments. The said referee or master shall state an account between the parties, charging each six per cent. interest from date of receipt of money, and shall report a schedule of securities held by the American Emigrant Company unpaid as aforesaid.

It is further ordered that the master enquire into, and make report to the court, of the amount of money reasonably expended in and about the certain suit in the Page County district court of Iowa, wherein Frank M. Davis was plaintiff and the complainant herein was defendant, as set forth in the pleadings in the suit, and to report the necessary amounts of money paid on said judgments to satisfy the same, and the reasonable costs thereon, and by whom paid and incurred, and what part complainants and respondent respectively took in the defense of said Page County suit.

It is further ordered and adjudged that any sales made by the
782 American Emigrant Company of any of said lands subsequent to April 28th, 1869, shall be reported by the commissioner, and he shall also report the terms of sales, whether said lands are occupied and have been improved by the purchasers, and the question of confirming or declaring said sales void shall be subject to the further order of this court.

And it is further ordered and adjudged by the court that complainant, the county of Adams, have and recover its costs in this behalf expended from said American Emigrant Company, taxed at dollars, and that execution issue therefor.

To all of which the respondent, the American Emigrant Company, except and pray an appeal, which is hereby allowed, and the amount of appeal-bond is fixed at $10,000.00 dollars, to be approved by the court, and upon the filing of the same within 60 days of this date the execution of this decree is fully superceded until the determination of said appeal.

783 And afterwards, to wit, on the 5th day of December, 1874, said respondents filed in said cause its appeal-bond in said cause, which said appeal-bond is in the words and figures following, to wit:

784 *Appeal bond.*

In the U. S. circuit court, district of Iowa, term, 1874.

THE COUNTY OF ADAMS, IOWA,
vs.
THE AMERICAN EMIGRANT COMPANY ET AL.

Know all men by these presents, that we, the American Emigrant Company, as principal, and J. C. Savery & J. B. Stewart as security, are held and firmly bound unto the county of Adams, State of Iowa, in the penal sum of ten thousand dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and assigns firmly by these presents. Dated this 30 day of November, A. D. 1874.

The condition of this bond is such, that whereas the said American Emigrant Company and others have appealed from the decree of the U. S. circuit court for the State of Iowa, made at the October term of said court, A. D. 1874, in a certain cause in chancery, wherein the
785 county of Adams is plaintiff, and The American Emigrant Co. et al. are defendants, to the Supreme Court of the United States:

Now, if the said American Emigrant Company shall pay all costs and damages that shall be adjudged against it, and that will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the Supreme Court may render, or order to be rendered by the said circuit court, not exceeding in amount or value the original judgment or order, and all rents or hire or damages to the property during the pendency of the appeal, out of the possession of which the appellee is kept by reason of the appeal, and all costs and charges that may be awarded thereon by said Supreme Court, then this obligation to be void; otherwise to be and remain in full force.

(S'g'd) THE AMERICAN EMIGRANT COMPANY,
Principal,
By NOURSE & KAUFFMAN.
J. C. SAVERY, *Security.*
J. B. STEWART, *Security.*

Approved this 1st day of December, A. D. 1874.
J. M. LOVE, *Judge of said*

(Endorsed:) Filed Dec. 5, 1874. George B. Corkhill, clerk.

786 In the circuit court of the United States for the district of Iowa.

I, George B. Corkhill, clerk of the said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copies of the pleadings, proceedings, depositions, documentary evidence, record entries, final decree, and appeal bond in a certain cause adjudicated in said court wherein Adams County, Iowa, was plaintiff and The American Emigrant Company et al. were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at my office in Des Moines in said district this 23 day of September, A. D. 1875.

[SEAL.]
GEORGE B. CORKHILL,
Clerk U. S. C. C., District of Iowa.

(Indorsement on cover:) No. 348. The American Emigrant Company, appellant, vs. The County of Adams, Iowa. C. C. U. S. Filed 24th January, 1876.

Supreme Court of the United States.

OCTOBER TERM, 1878.—No. 85.

THE AMERICAN EMIGRANT COMPANY, *Appellant*,

VS.

THE COUNTY OF ADAMS.

ARGUMENT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

J. A. HARVEY,
Solicitor for Appellant.

P. C. KENYON, Legal Printer, Des Moines, Iowa.

IN THE

Supreme Court of the United States.

NO. 85.

THE AMERICAN EMIGRANT COMPANY, *Appellant*,
vs.
THE COUNTY OF ADAMS.

APPELLANT'S ARGUMENT.

STATEMENT OF THE CASE.

This suit is brought to set aside and declare void a contract between Adams county and the American Emigrant Company, entered into by the board of supervisors on the 3d day of September, 1862, ratified by the electors of the county at the ensuing general election--being voted on in all the townships, and carried by more than *two* to *one*—and on the canvass of the vote by the board, declared valid and binding on the county, and afterwards executed and carried out by the execution and delivery of a deed, and the payment of the consideration money by the defendant into the treasury of the county, according to the terms of the agreement.

Under these circumstances, having acquiesced in the contract for so many years, during which time the greater part of the land has passed into the hands of innocent parties, by purchase from the defendant, it ought to require a *very strong* case to entitle the plaintiff to much consideration. We hazard nothing, however, in saying that not only is this case barred by permitting the contract to be carried into execution, and

by the statute of limitations, but that every material issue made in the pleadings must, on fair and full consideration, be decided in favor of the defendant.

All we ask is a *fair, full* examination of the case.

I. The bill alleges that Adams county owned 2,000 acres of swamp land, patented, and had a claim against the government for 4,000 acres more, and also a claim for indemnity amounting to $10,000.

II. That on the 3d of September, 1862, the board of supervisors, by contract, disposed of all the said land and indemnity claim to the defendant for $2,000, to be expended in building bridges, or paid into the treasury, at the option of the board, defendant also paying the expenses and liabilities incurred by the county in regard to said lands, and to settle and improve the lands within three, five and eight years from the ratification of the contract by the people at the general election in 1862.

III. That on the 7th day of September, 1863, the board executed a deed, conveying said land and claims to the defendant, and placed it in the hands of the clerk to be delivered, on compliance by the defendant with the terms of the contract, and that said deed was delivered by the clerk to defendant, and placed on record.

It is claimed in the bill that this *contract* and the *deed* are both void, on the grounds:

1. That the board had no power to sell the land at less than $1.25 per acre.
2. That they had no power to dispose of the indemnity claims against the United States Government.
3. That the contract and its ratification was procured by false and fraudulent representations by defendant's agents.
4. That the delivery of the deed was also procured by *fraud* and conspiracy between the defendant and the clerk.

5. That the contract is without sufficient consideration and unconscionable.

6. That the consideration has failed; that the defendant has failed and refused to carry out the covenants of the contract, or to account for the money received; and

7. That there was no proclamation of the election, or copies of the contract posted, and prays a decree rescinding the contract, and requiring the defendant to account for the indemnity money received.

8. *But if not entitled to a recision of the contract, then plaintiff asks that defendant be required to pay the amount paid by the county on the Davis judgment.*

The *answer* admits the execution of the *contract* and *deed*, and the ratification at the election, but denies the alleged value of the property, and every charge of illegality and fraud, and then shows:

That plaintiff had but 2,000 acres patented lands; that her indemnity claim had no market value; that her efforts to have it allowed had been fruitless; that her proofs sent, as all proofs of like form, had been declared by the department insufficient, and a more stringent form adopted, one that would greatly reduce the indemnity, and rendered it doubtful what, if anything, could be realized therefrom; that these things were truthfully represented to the board and understood by them at the time; that, by the contract, the county disposed of all the swamp land interests, both land and indemnity claim, defendant taking all risks, and paying all expenses, and all just claims against the fund; that these facts were all well understood by the parties at the time, and said contract entered into in good faith, without any fraud whatever, and that it was fairly submitted to the people at the general election in 1862, and ratified by a large majority.

That defendant, at great expense and trouble, vigorously prosecuted said claim for indemnity, and succeeded in procur-

ing the allowance of $6,075.66 thereof, the receipt of which is admitted.

That defendant has performed all the conditions precedent of said contract, and is willing to perform any other, if there be any unfulfilled, and that plaintiff remained satisfied with said contract until induced by the counsel to prosecute this suit in pursuance of a champertous contract.

Denies that the claim of the Davis judgment is just, and claims that it was obtained by collusion and fraud between the county and Davis, but offers to pay the same if the court does not so find; denies the right to bring this suit; avers the solvency of defendant, and abundance of property in the State, and claims that the plaintiff's remedy is at *law*.

ARGUMENT.

To determine the merits of this controversy the more readily, it is well to know something of the value of the subject matter, at the time the contract was entered into. For this purpose, as well as to understand many other questions presented, it is necessary to know something of the history of the swamp land grant, as it relates to the State of Iowa, and the proceedings thereunder, and the condition of these swamp land claims, especially those of Adams county, as they stood at the Department.

To the evidence of H. L. Skinner, for some years Chief Clerk in charge of the swamp land division of the General Land Office, and since then in the service of the defendant in immediate connection with these swamp land matters, and who has a perfect knowledge of all the different positions and decisions of the department on the subject (Rec., 207 to 216), and to that of J. C. Savery, who had charge of all the Company's swamp land claims, and under whose immediate direction not only the claim of Adams county, but all the claims were presented and prosecuted at Washington, and who possesses a like thorough knowledge of the subject (Rec., 216 to 224), and to the exhibits therein referred to (pp. 225 to 232), we call the

especial attention of the court, because they not only furnish a reliable and comprehensive knowledge of the general subject, but show the condition of the claims of Adams county at the time the contract was made. The evidence abundantly sustains the allegations in our answer as to the condition and value of these claims, and leaving the discussion of the question of consideration to come up in its order, we proceed to take up the points as presented in the bill.

I.

ILLEGALITY OF THE CONTRACT.

First. Complainant insists that this contract was prohibited by section 959 of the Rev. 1860. "*No swamp or overflowed lands shall hereafter be sold at less than one dollar and twenty-five cents per acre*," for the *reason* "that the land was donated for the specific purpose of applying the proceeds to the reclamation of the swamp lands themselves, the minimum price under the United States laws being $1.25 per acre, and to allow sales for less would defeat the object of the grant."

If the object was to appropriate the proceeds to reclaiming the lands, and the minimum price fixed at $1.25, so as to provide that much at least for that purpose, is not the object of the law accomplished by this contract? The company was bound by this contract to drain and settle the land, besides paying the county the $2,000 and several hundred dollars more of liabilities incurred in connection with the claim.

The money consideration which was to go, not for reclaiming the lands, but into the county treasury (amounting to more than $1.25 per acre for the land then owned by the county, as we will hereafter show), was in addition to, and beyond the draining and reclaiming of the lands—that was secured *first*, and then this additional amount paid, after the *specific purpose of the law* was accomplished.

Nor does the allowing of indemnity for swamp land disposed of by the government support that position. Indemnity was provided simply because after the passage of swamp

grant the United States, through the local land offices, continued to dispose of lands, without regard to their swampy character, acting on the theory that the title did not pass to the State till the lands should be selected and approved as swamp under the grant.

But when, by judicial decision, it was found that the act of September 28, 1850, was a present grant, and passed the title at once to the State, then it was discovered that the government had been selling lands it had no interest in, lands belonging to the States, and lands, therefore, for which it could give no title. It is the practice, when unable to give title, for the government to return to the purchaser the money or warrants paid for the land.

Instead of doing that in these numerous cases, Congress, by act of March 2, 1855, provided that if the land is duly proven to be swamp and overflowed, the money received for it shall be paid to the State, no difference what amount nor at what price the land had been sold, the whole consideration received should be passed over to the State, because the land sold belonged to the State, and by taking the indemnity, the State ratified the sale and made it good, without disturbing the purchaser. (Exhibit "B," page 226.)

Where the land had been located with warrant or scrip, no money being paid, there was no money to pay over, and the warrant or scrip could not be passed to the State so as to avail anything, so it was provided in such cases that the State should have the privelege of taking a like amount of vacant "public land, subject to entry at one dollar and a quarter per acre *or less*." (Act of 1855, Sec. 2.) True the usual price of the public land was $1.25 per acre, but not always so.

Large amounts have been sold for less—as low as 12½ and 15 cents per acre, and under the act of the General Assembly of January 13, 1853, the swamp lands could be sold as low as twenty cents per acre, and that could be paid in work on the land. (Rev. 1860, Secs. 929 and 940; also, Sec. 943.)

Therefore there is no weight in the argument in this case.

If the object of the grant was to reclaim the land, how would that object be defeated by contract which secured that *very object*, even if the consideration, beyond that, were *merely nominal?*

Counsel claimed that pre-emptors were required to pay $1.25 per acre and reclaim the lands, besides themselves; and purchasers of unreclaimable swamp lands had to do the same thing and that the government rated the land at that sum in its unreclaimed state. And hence, it was the intent of the Legislature "to prohibit all sales before the lands were reclaimed, except at the price of one dollar and a quarter per acre, in addition to the cost of draining; that the country's interest, exclusive of the draining, must be at that price, and every inferior price is prohibited."

But it is not true that pre-emptors had to pay one dollar and twenty-five cents per acre and drain the land besides. They had the right to work it out, in reclaiming the land. Rev. Sec. 946 and 640. The act of January 25, 1855, only repeals "such provisions of the act of January 13, 1853, and other acts as are in conflict with its provisions." The provisions of the previous act, giving pre-emptors the right to pay in labor—that is, pay their dollar and twenty-five cents per acre for the land, in draining it, are not in conflict with the act of January 25, 1855, in any respect, and are not repealed by it, but left in full force, and abundantly refutes the counsel's position. The pre-emptor is required to pay the consideration of one dollar and twenty-five cents per acre, and if he will do the work as low as any other bidder, he may pay that in ditching the land, but if he will not, he must pay or secure the same, and the ditching shall be let to the lowest bidder. Rev., Sec. 940 and 946. Not only a pre-emptor, but any purchaser may, under said act, pay in labor, in draining the lands, and the act refutes the idea, that the land must bring that price, above the cost of draining, and shows the intent to be, to use the proceeds of the sales, so far as necessary, for reclaiming; and to secure sufficient funds for that

purpose, the price should not be less than one dollar and a quarter.

The act of January 25, 1855 (Rev., 154, Art. 5), also refutes his position. If it is *impossible* to reclaim the land, how can the purchaser do it? There are some swamp lands lying along streams so subject to overflow that they cannot be dyked or drained. For instance, along the Missouri river in some places, and yet the lands are often valuable for their timber. This provision applies only to such as cannot be reclaimed for cultivation. Why authorize the proceeds of *this class* of land only to be devoted to objects specified in section 957? The reason is obvious. There is no use in expending the money in reclaiming. So it may be otherwise appropriated. But the lands that can be drained must have the proceeds, so far as necessary, expended for that purpose.

These acts show that the intent was not to put $1.25 per acre into the coffers of the county, and make the purchasers reclaim the lands besides, but by selling the lands at that price to raise a sum sufficient to reclaim them. Our position is also fully sustained by section 941 of the Revision, which provides that only enough shall be sold to complete the draining of the lands, and then provides that if there be any left after that is done, they shall be expended in building roads and bridges. This section is not repealed by section 960.

We shall presently see that section 988, relied on by appellee's counsel, not only fails to sustain him, but like the others relied on, furnish an unanswerable argument against him.

In all the acts of the Legislature on this subject, prior to 1858, the object is so apparent that there is no reasonable ground for dispute. The counties received the *grant* charged with the *trust*. To enable them to discharge the trust, they must dispose of the lands. The lands must furnish the means for their reclamation, and to secure a sum supposed to be sufficient, the minimum price is fixed at $1.25. If any be left, of the funds thus secured, after the draining is done, it is to be

otherwise appropriated, as also the proceeds, where the lands are not reclaimable.

It is unreasonable to argue that the Legislature, in these statutes, expected or intended to require the purchasers of these *swamp lands* to pay $1.25 per acre, and bear the expenses of reclaiming them to cultivation by ditching, dyking, etc., when, at the same time, and at the same price, they could get in almost any part of the State, the best quality of land, that needed no such expenditure.

Secondly. We cannot pronounce the contract an absolute or technical sale, as distinguished from the *appropriation* of the land under the *act of March 22, 1858*, simply because it contains the words *sell*, *release*, and *convey*, nor because it is referred to as a *sale*. It must be determined by the facts and circumstances connected with the transaction, showing the intention of the parties. Every parting with title is in some sense a *sale*. If A and B trade farms, the bonds or deeds would be in form the same as of *sales*. We insist that this contract was not a *sale* by the acre, in the sense contemplated in the acts which we have been discussing, and in which the minimum price was a dollar and a quarter, but an appropriation or "devotion" of the land as authorized by the said act of March 22, 1858. (Rev., section 986 to 990.) In this very act, the term "*sale*" is used in regard to the contracts for the disposition of the lands therein authorized to be made (section 988), and we insist that under that act the limitation of the price to one dollar and twenty-five cents per acre does not apply.

Up to the passage of that act the selling of the land was in the hands of a *single* county officer, and it was but ordinary prudence to fix a limit below which he should not sell; besides that, the proceeds of the sales were to constitute a fund to reclaim the land, and it was necessary to limit the price so as to secure an amount probably sufficient. Hence purchasers were required to pay or work out $1.25 per acre.

Here were then two reasons for the restriction ; first, to raise sufficient fund ; second, to guard against fraud or mistake in judgment of the county officer.

Now, by this act of March 22, 1858, the county is permitted to " devote," or appropriate the swamp land (or the proceeds, if the lands have been sold), or any part of them, to certain specified objects. (Sec. 986.)

Sec. 2 (987) authorized the proper officer of the county to contract with any *person* or *company* for the *transfer and conveyance* of the lands or proceeds, or to *otherwise appropriate* the same to such person, or company, or to their use, to aid in such object.

Sec. 3 (938) provides that such contract or appropriation to be valid, must be submitted to a vote of the people, and the party must also take the lands subject to the conditions of the grant, and release the county and State from the obligation to reclaim them.

Here both the points sought to be guarded by the $1.25 restriction, are effectually secured in this act.

The submission to the discussion and vote of the people, removes the danger from the fraud or weakness of the county officer, while the fund to reclaim the lands is wholly unnecessary to the county, because the person or company taking the lands is required to release the county and State therefrom.

The first duty was to raise out of the lands the means to accomplish that object of the grant, and to do it the restriction to the minimum of $1.25 was necessary—*for out of the fund thus raised the draining was to be done; for that purpose that sum was paid to the county.* Now, if the land is appropriated under this act of 1858, this fund created in the hands of the county, by the payment of $1.25 per acre, is unnecessary, because the obligation no longer rests on the county. It is removed by the contract under the authority of the legislature in this act.

Then why still require the drainage fund to be paid to the county, the same as if the obligation continued?

The limitation of $1.25 per acre can have no possible application to contracts made under this act of 1858. It was passed to enable the counties to appropriate their swamp land in bulk, or in such manner as they might think proper, to any of the objects specified, regardless of the rules and restriction governing sales in parcels under previous laws, and it is only necessary to pay such sum, or appropriate to the designated improvement such amount as may be agreed upon between the parties, which is supposed to be the price fixed upon the land, over and above the amount deemed necessary to insure the county against the obligation to reclaim, as enjoined in prior acts. The amount thus agreed on takes the place of that which, under section 941, might be devoted to building *roads* and *bridges*.

The limitation of $1.25 per acre can not apply to contracts made under the act of 1858. (Rev., Sec. 986.) That act being subsequent to the provisions restricting the price, and authorizing any county owning swamp lands to dispose of them *in whole or in part*, for the purposes specified, with the consent of the voters, necessarily abrogated that restriction in all such cases. The land could have been sold for a dollar and a quarter per acre without that act. It was unnecessary, so far as a disposition of the lands was concerned, if that limitation was still to be applied. This defendant could have purchased the lands at that price, without assuming any obligation, and without any reference to improvements at all. Under the previous laws, they were subject to sale at $1.25, and the obligation to drain rested on the county. Now, when the Company could buy the lands at that price without assuming any obligation, is it reasonable that it would bind itself to pay that price, and also assume gratuitously the other obligations? If so, there is no force or sense in this act of 1858, so far as the disposition or "devotion" of the *lands* is concerned. If the lands must, under it, bring the price contended for, why

the provisions to devote the *lands themselves?* Why not confine it to the *proceeds?* If the price be the same, the purchaser would of course prefer it without being encumbered with the conditions and obligations enjoined by this act, and no contract could have been made under it. We say then, what was the object of the law, and what could it effect? If it be said that it was simply to enable the counties to get the the lands drained, besides getting the $1.25 per acre, we answer, they had that right before. They were limited only as to the *minimum.* They could get as much more, and secure as many conditions and obligations as the purchaser would agree to.

Adams county had the right, without any regard whatever to this act, to sell her swamp lands to this Company at $1.25 per acre, and enjoin any obligations in this contract, without submitting it to a vote of the people, and without making any allusion to public improvements, both of which the Company would, of course, gladly have avoided.

The *right* to make this contract so as to secure all the obligations enjoined on this defendant, was not given to the county by this act of 1858, for it had that power before, and it could not be designed to *compel* the county board to secure the specified conditions, for if they were not desirous of doing so, they could sell or contract under the previous laws, and avoid this act altogether. This act of 1858 could then effect nothing except to authorize the "devotion" or diversion of the *proceeds*, if appellee's theory be true. Then why say anything about "devoting" the *lands?* This act had a specific object, which was to appropriate whatever could be made out of the lands, beyond the obligation of the county to reclaim them, to certain objects for the public good. It authorized the county to devote the proceeds if the lands had been sold, or the *lands themselves* if not sold.

It was passed in view of section 941, then in force, which limited sales by the county to the amount necessary to raise sufficient funds to reclaim the lands, and the surplus, if any,

was to be appropriated to roads and bridges. Before there could be any proceeds to operate on under this act of 1853, there must have been enough raised and expended to reclaim the lands. Hence, in this act (Sec. 988), if the proposition be to "devote" the *proceeds*, it is not necessary for the "person or company to take the same subject to all the provisions of the act of Congress of Sept. 28, 1850, and release the State and county from the liability to reclaim the lands," for this is supposed to have been already done. But, if the lands themselves are to be devoted, then that stipulation is required. Nothing can be clearer than that the $1.25 limitation has no application to contracts made under this act of 1858, and the Supreme Court of Iowa have expressly so held in several cases.

Audubon Co. vs. Am. Em. Co., 40 Iowa, 460.
Page County vs. Am. Em. Co., 41 Iowa, 115.

Again, this contract is assailed as illegal, and subject to be set aside in this suit, because it does not specify the particular improvement to which the funds should be applied?

This part of the contract reads as follows: "The said company agrees to take said lands, and fund, and claims, and make for said county any public works or improvements therefor which the board of supervisors may request, and which were authorized to be made thereto by law, of the full amount and value of $2,000, the specifications of such work to be furnished by the board of supervisors, from time to time, as they prefer, at any time after October 1, 1863, and the work to be finished according to such specifications by one year from 1st first day of January, after the furnishing of such specifications."

It is claimed that this act of 1858, under which this contract was made, requires the contract to specify the particular work. Sec. 2 (Rev., Sec. 987) provides that the county may appropriate the swamp land or funds, or proceeds thereof, to any person or company for the purpose of aiding or carrying out any of the objects contemplated in the first section of the act.

The first section provides that the county may devote the swamp lands or proceeds, "in whole or in part, to the erection of public buildings, for the purpose of education, the building of bridges, roads and highways, for building institutions of learning, or for making railroads,—*provided*, the *question whether the same shall be so done* shall be submitted at some general or special election to the people of the county."

The objects specified in this section are those to which the land or proceeds may be devoted, and are therefore the *works or improvements authorized to be made* by law. Now, the contract provided for in the second section is a contract to devote the lands or proceeds to a person or company "for the purpose of aiding or carrying out any of the objects mentioned in the first section." This contract comes fully within the second section, and is a sufficient compliance with it, and the question to be submitted to the people is, whether the lands or proceeds shall be devoted *to any of the purposes mentioned in the act.*

To leave the discretion with the board to specify the work, might have justified the people in voting against the contract, but did not make the proposition unlawful or the contract void.

The act of January 13, 1855 (Rev., Sec. 957), in force when this act of 1858 was passed, provided for the same thing as the latter act, with the exception that it required the county judge to "submit the question, *including the proposed work* of improvement." This act of 1858 does not require the submission of the "proposed work of improvement." That provision is left out, and, we must conclude, intentionally.

The proposition to devote the swamp lands or proceeds to any object of public improvement is *one* question. What particular work or specific improvement, is *another* and a different question. Under the act of 1855, both these questions were required to be submitted at one and the same time. But not so under this act of 1858.

The idea contended for, that the people should determine the particular work or improvement to which the fund shall

be applied is more plausible than real, and not consistent with the concurrent legislation of the State.

The board of supervisors, or formerly the county judge, had a right to enter into a contract for the building of a bridge, court-house, or other public improvement, without submitting it to a vote. The ordinary revenues of the county raised for such purposes, were, in the first instance, levied at the discretion of the board, and expended at the discretion of the board. The only limitation upon the exercise of this power, was the duty to take a vote of the people when the building was to exceed a cost of $2,000—now $5,000. And the law did not require the *contract* for the erection of the building or bridge to be submitted, but only the question of undertaking the enterprise.

See *State ex. Brooks vs. Napier*, 7 Iowa, 425.
Barrett vs. Brooks, 21 Iowa, 144.

The only thing contemplated by the act is simply to take the vote of the people upon the proposition to convert the swamp land fund, previously designed solely for reclaiming the lands, to a fund for works of public improvement. In the language of the statute, the question to be submitted, was whether the "lands or the proceeds thereof shall be appropriated for the purpose of aiding in any of the objects mentioned in the first section of the act.

This point is expressly decided, we think, in the case of *Barrett vs. Brooks, supra.* The remedy, at any rate, is not by setting aside the contract. The proceeds of the contract have been paid into the county treasury. If it is unlawful for the board to expend it, in their discretion, without a vote of the people, as to the particular object, that question can, at any time, be submitted, or the expenditure restrained by any one interested in so doing. The power to correct the error, if it be one, is yet in their own hands.

The company is not to blame for this uncertainty in the contract. It was as willing and ready to construct one kind

of work as another, and that the board and the people had not selected what particular work they desired and resrved to themselves, to designate it afterwards, is not its fault, and to set aside the contract on that gound would be exceedingly inequitable and unjust.

Again, this contract was made in September, 1862, and ratified at the election in October following—deed made in 1863—the money placed at the disposal of the county, a large portion of the land sold by defendant, and settled and occupied by innocent purchasers—these things all known and acquiesced in by company till the bringing of this suit in 1869.

10 Ia 460. 21 " 115

It is too late to ask the recision or cancellation of the contract on such technical grounds, and the Supreme Court of the State has passed upon this identical question, and settled it.

Power of the County Board to Dispose of Unadjusted Claims.

This question has been repeatedly before the Supreme Court of Iowa, and is settled if the courts of that State can settle anything.

1st. In *Allen vs. Cerro Gordo Co.*, 34 Iowa, 54.

In that case the contract was for the sale of one-half the swamp lands and indemnity belonging to the county, to be paid for, not in public works, nor at $1.25 per acre, but by an unascertained and uncertain amount of services and expenses, to be rendered in prosecuting the claims to settlement; and the court affirmed its legality on the ground that it was a sale of an interest in an uncertain, unadjusted and disputed claim to lands and indemnity, to which the limitations and restrictions in the legislation of the State, prior to 1860, had no application. We have already proven in this case that the condition of the claims of Adams county were equally or more doubtful than the claims of Cerro Gordo county was shown to be, by the preamble to the contract in that case. The court in that case place the power of the board to dispose of the one-half interest in the disputed and doubtful claim for swamp

land and indemnity, upon the general provision of the statute giving the board of supervisors "the management and control of all property of the county." It is not different in principle that in that case the county sold *one*-half her claim, to be paid for in services and expenses in securing the *other*, and in this sold *all*, on the terms of this contract.

The court do not go so far as to hold that the board may, without regard to the restrictions of the act of 1858, dispose of the lands to which the county had already established her claim and perfected her title. But in discussing the powers of the board over the swamp lands, they attach no importance whatever to such prior legislation. And, in answer to the objection that it was not submitted to a vote, say, "it was not a contract for the sale of swamp lands, to which the county had acquired title." It does, however, settle the point that the board has the power to dispose of an unadjusted claim against the United States, for both *land and indemnity*, without regard to the restriction referred to, and without submiting it to a vote.

All embraced in the case at bar except the 2,000 acres patented lands (and part of them had been sold by the county), was an unadjusted claim against the United States, and as we have seen, the board had the power to dispose of it, even without a vote of the people.

2d. In *Ringgold Co. vs. Allen, et al.*, 42 Iowa, 697.

That case, in brief, was this: In April, 1863, the board of supervisors of Ringgold county contracted with T. E. Brown for the prosecution of their unadjusted swamp land claims, Brown to take out of the proceeds of the settlement, first: $1,000 to reimburse him for expenses, and then the balance of money and land scrip secured was to be divided equally between him and the county. B. F. Allen was appointed special agent under section 13, chapter 160, acts 9th General Assembly, and authorized to receive the proceeds of the settlement for the county, and gave bond as such agent. In April, 1867,

$16,737.62 came into his hands as such agent. The board of supervisors, on the 22d February following, appointed a committee of two of their number to make settlement with Brown and to receive the money coming to the county.

On the 27th July following, this committee made a settlement with J. C. Savery, who acted for Brown and Allen, and after deducting the $1,000, the money was divided according to the contract; but there was also some scrip not yet located, and $300 of the county's half of the cash was retained to pay its share of the expenses of location, and perfecting of title, etc., to be accounted for on final settlement, the committee agreeing for the county that one-half the indemnity lands should be deeded to Brown. Receipts were given by the parties showing this settlement as stated. The committee reported to the supervisors, at the September session, 1867, this settlement, and paid over the money, $7,568.80. Their report was accepted, and the committee discharged. Afterwards, concluding that the board had no power to make such contracts, and thus dispose of their claims, etc., the county brought suit on Allen's bond for the whole amount that came into his hands as such agent, ignoring the contract and settlement with Brown as illegal.

In the district court a judgment was rendered on the verdict of a jury for plaintiff for $8,168.82 (which amount, as it appears, with that already paid to the county, made the whole amount received on the claims, except $1,000 allowed for Brown's expenses).

The court refused to set aside the verdict, and the Supreme Court reverse the judgment.

The district court, in its thirteenth instruction to the jury, charged that Allen had no right to pay any part of the money to Brown, without he was authorized to do so by the board or the committee and if he did it without such authority, it was no defense. In speaking of this instruction, the Supreme Court says: "This instruction is vulnerable to several objections. It must be immaterial to the plaintiff whether Allen has

paid Brown at all, or if he had, whether he did so either with or without authority, if *according to the contract between Brown and the county, the plaintiff had got all it was entitled to;*" and as to the fourteenth instruction, which charged that the "county was not bound by the unauthorized acts of its agents and officers, and that the board of supervisors had no authority to settle with Allen on any other basis than the full accounting for all money in his hands, and either the payment to the plaintiff (the county), or to such person as the board should direct, after settlement with such person;" the court say: "This instruction is *liable to the same objection as the last*, and also to the further one of making the jury judges of the law, to determine whether some undefined act was unauthorized by law." "Both were erroneous and misleading."

This case is in harmony with the Cerro Gordo county case, so far as it goes, and shows that in the opinion of our Supreme Court, the county board has power to control and dispose of these unadjusted claims against the government. And the idea that a county, when it sees that it is about to lose its claims, and has not the ability or power to prosecute it successfully, can sell out, in whole, or in part, to some company or person that can command the means and influence to bring the matter to a favorable issue, and after the work is done and expenses paid, then repudiate the contract as unlawful, and demand all the proceeds of the adjustment, does not find favor with that tribunal.

3d. In *Audobon Co. vs. Am. Em. Co.*, 40 Iowa, 460.
4th. In *Page Co. vs. Am. Em. Co.*, 41 Iowa, 115.
5th. In *Montgomery Co. vs. Am. Em. Co.*

All of which were suits to set aside contracts like the one with Adams county, on the various objections urged to this one. And in the Page and Montgomery county cases this point was relied on with as much confidence as in this case. In all the cases these objections were overruled, and the contracts held to be legal, except in the Montgomery county

case, the contract was set aside on account of a mistake as to the condition of the subject matter. A part of the claim had been adjusted, and the parties in Iowa were not aware of it at the date of the contract.

These authorities sufficiently dispose of this as well as the two preceding objections.

But we do confidently maintain that the legislation relating to the power of the counties over the swamp lands, enacted prior to 1860, has no application to the powers and duties committed to the boards of supervisors.

We call the attention of the court to the provisions of the statutes.

Revision, section 312, defines the powers of the board of supervisors—part 3—"To make such orders concerning the corporate property of the county as they may deem expedient." Part 11—"To have the care and management of the property and business of the county in all cases where no other provision is made." In this same act, section 313, is defined the manner in which the board of supervisors may dispose of the property of the county, as follows, to-wit: "No real estate shall be purchased or sold without a majority of the whole board of supervisors voting therefor, and consenting thereto."

Section 310 (subdivision 23), defines the only cases in which they are required, in the exercise of the powers conferred on them, to submit questions to a vote of the people, to-wit: When the erection of a public building, or *purchase* of real estate, is to exceed in cost $2,000—now $5,000.

Then we have chapter 8, of the laws of the extra session of 1861, approved May 28, 1861. It enacts (section 1) "that the swamp lands in the several counties of this State be, and the same are, hereby placed under the control of the boards of supervisors."

Section 2. "The acts of all boards of supervisors in any county of this State, heretofore done and performed, are hereby ratified and legalized."

Here is no limitation or restriction whatever. The statute is absolute, and places the matter of the swamp lands entirely within the control of the board.

Section 325 of the Revision can have no application to any powers conferred on the board subsequently, but only to those conferred by that act; nor has it any reference to any limitation or restrictions placed on the *powers* of the county judge, but only to the mode of proceeding in the exercise of their powers.

The swamp land acts, enacted prior to 1860, contained express limitations and restrictions on the exercise of certain powers by the county judge (and we have seen the reason), none of which restrictions are found in the act of 1860 or the act of 1861.

The county judge had not control of the swamp lands. He could only devote them to certain purposes, by a vote of the people. His contract had no validity till approved by the electors. This was not the manner of *his* proceeding only, but also of another body—the electors of the county. The power was, then, not conferred on him at all, but on them.

Now, these provisions of the law are wholly inconsistent with the act creating the boards of supervisors.

They have conferred on them the absolute and unconditional power to contract for the sale of real estate of the county, and the only limitation is the "consent of a majority of the whole board." The manner of the exercise of the power conferred on *them* is defined in the act creating the board, and no other manner of proceeding is consistent with it. A vote by the electors is in no sense "a manner of proceeding by the board of supervisors," in the exercise of powers conferred on them.

It is a limitation or restriction on the *power*, and such as is not contemplated by or embraced in section 325. And our Supreme Court very properly said: "These provisions seem to confer ample authority." (34 Iowa, p. 60.)

And then we have the act of 1858 (Rev. 1860, p. 159, Art. 11), under which this contract was made, and by which it is expressly authorized.

III.

FRAUD.

The third objection charged in the bill, is that the contract and its ratification, were procured by *fraudulent representations*. To sustain this charge, a vast amount of testimony is taken, covering nearly 60 pages of the record (Rec. 145 to 200), and in it all, an unbiased mind will not find a well grounded charge. The substance of it all, is, that the agent, McKay, represented the *indemnity claim* as *doubtful*. At the time of the election, the company had no agents in the county. Bixby, and other witnesses of the county, testify that *after the contract was ratified*, he was appointed agent to sell lands, and he says that he was not employed or paid by the company before that, except $15 for extra work, writing the notices and copies of the contract, for posting in the townships. Witnessess *Lannin*, at Queen City, (Rec. 145); *Holbrook*, at Quincy, (Rec. 147); *Case*, at Union, (Rec. 148-9); *Bixler*, at Douglas, (Rec. 174-5), undertake to give representations made in regard to the contract, at the elections in their respective precincts. There were, as Bixby testifies, *nine* in the county. In all these, four men are found, reckless enough to undertake to give conversations on a particular subject, at a general State election, among the voters, ten years previous, while they remember scarcely anything else. Some of them cannot remember, even, how they themselves voted.

It shows how utterly unreliable such testimony is after the lapse of years. Not one of these men can recollect seeing the contract posted up, or notice of the election, and yet all claim to have understood what it was. It would be quite improbable that the election would be ordered and held, and the contract discussed and voted on in every township in the

county, without some voter finding out that the publication of the contract was necessary. And it would be a gross slander on the intelligence of the voters of that county to say they did not know that they had a right to see and know what was in the contract they were asked to vote on. They had a right to see it—they did see it. The evidence shows it was published in every township, as the law required, and Bixby was paid $15 for writing the copies. That they do not remember it proves nothing—but the uncertainty of human memory. But the statements, if made, as these witnesses say, amount to nothing. They were simply conversations between citizens, as to the propriety of adopting the contract, and could not affect the contract or company in any respect.

Witnesses Smurr (Rec., 155–7), Schooling (Rec., 158–165), and Barnett (Rec., 175–7), were members of the board, and heard McKay's statement to them, and the very most that can be claimed from their testimony is that the claim was uncertain and of doubtful value; that it was uncertain whether anything would be realized on it or not—every word of which was true, and the evidence shows it. Smurr says that McKay did not profess to have any personal knowledge on the subject, but there was a *circular* before the board in regard to the condition of the claims, and that his action was controlled by the circular, and not by what McKay said. (Rec., 154–7.) Schooling (Rec., 158–9) says McKay "held forth the idea that we would get about 2000 acres; that the rest of the claim was uncertain." The witness' memory is not distinct on all points. He does not remember whether he signed the deed or not. (Int. 27.) As to the claims (Int. 16), he says: "There was some talk, but I can't get it together to answer correctly." And as to statements of other members, as to what McKay said (Int. 32), he is about equally clear. But as to McKay's representations influencing his action, he is more confident. He says (Int. 23): "I had but very little faith in him. *I was doing business for the county.* As far as my own feelings were concerned, it did not have much influence." He very candidly

admits, however, that the writing signed by the parties is more reliable, as to what the agreement was, than even his memory, after the lapse of ten or eleven years. *Barnett* (Rec., 175-7), says McKay said it was doubtful what would be realized out of the claims; that it might cost all that could be got; he refused to leave the claims out however.

As we will hereinafter see, the statements attributed to McKay were true, if he did make them. But the board did not rely on his statement. Bixby's testimony shows that the board were in possession of the letter of the Commissioner of the General Land Office, of June 30, 1862 (Ex. "C," p. 229), before McKay was there.

Smurr, a member of the board and witness for the plaintiff, shows that at the time of the contract this circular was before the board; that from it they got the "idea that they had to go through the routine of proving up again;" that previous to the receipt of this circular, the "supposition was the money would be received." Also, that McKay "made no representations outside the circular," and that "the board, in making the contract, *relied on the representations made by the circular*," and also that McKay did not claim to know "*only what he could gather from circumstances*, and thought there no likelihood of getting anything" on the claims. This same witness also shows that this circular was presented to the board when McKay was not there, and before the contract was made, and that they relied on it, and not on McKay.

Now, see Powell's deposition (p. 199): He was sheriff of the county, and present at the time McKay was before the board; and he says he based his conclusions and representationr to the people, not on what McKay said, but on the decision of the Secretary of the Interior, showed him by Bixby, which specified the kind of proof necessary, and from that he became satisfied the county would get no more.

Schooling, another member of the board, and witness for plaintiff, after stating that McKay spoke slightly of the claims,

and regarding them doubtful, says, "that he had no faith in McKay, and was not influenced by him."

We might point out more evidence sustaining the same point, but it is useless. We say that if McKay did represent the condition of the claims as charged, it was no misrepresentation: and further, that neither the board, in making the contract, nor the people in voting for it, were influenced by McKay's statements in regard to the condition of the claims, in the least; but that they were informed of the condition of their claim by official communication from the Department, and on that official and reliable information they acted.

It is certainly ludicrous to charge all the influence of an official decision of the Interior Department to the unaided representations of a stranger like McKay. And the idea that the county officers and citizens of Adams county could put their own construction on the contract, and give their reasons for supporting it, and say what they thought about it, and that McKay is responsible for all they said, and that at this late day such stuff can be made evidence to set aside an executed written contract, must depend for support upon reasons not often heard in courts of justice.

IV.

The bill also charges that the delivery and recording of the deed was procured by fraud and conspiracy between the company and the clerk of the county, and the only fact relied on to sustain this charge is that no mortgage was executed back to the county. The contract (Rec., p. 10) provides that the company shall expend $2,000 in such public improvements as the county may designate; but if the board of supervisors prefer to superintend the making of the improvements without expense to the company, then the money shall be paid by the company. The board elected to take the money and to erect the improvements, and it was accordingly paid by the company, before the deed was delivered, and we submit that no mortgage was necessary.

Mr. Bixby knew, and still knows, more about this entire transaction than any other man in Adams county. Clerk of the board, he received and laid before them the letters from the Department, was present at the meetings, heard all the representations, speeches and propositions, and knows just what was done and why it was done. And being an attorney, and subsequently defendant's agent, he had the facility and the occasion to keep in mind and review these transactions.

His testimony, therefore, must be much more reliable than persons scattered over the county, and for years disconnected with this or any other county business. The memory of such, as most of plaintiff's witnesses, must necessarily be affected by such a lapse of time, and infected by impressions subsequently received by neighborhood talk and otherwise, and their testimony consequently more unreliable.

We ask to his evidence (Rec., 180-193) the attention of the court. The truth of his statements is not doubted, and he gives us the most accurate and satisfactory testimony in the case, as to the execution and ratification of this contract.

He states that the deed executed September 7, 1863, remained in his hands till the $2,000 was paid by the defendant to the county, on the 19th June, 1865, and that it then became the property of the defendant, and was delivered and put on record.

At the time the deed was made and left with the clerk, to be delivered on the execution of a mortgage, the board had not elected to take the money. The company was to expend the sum of $2,000 in some work of public improvement according to specifications to be furnished by the board at a future time; and McKay, not knowing how long it would be before this contract would be carried out so that the defendant could get the title, proposed to take a deed, and give mortgage, to secure what? What could be secured by the mortgage but this $2,000, or its expenditure according to the contract?

The resolution of the board in providing for a delivery of the deed on the execution of a mortgage, securing the performance of "all the terms and conditions," means simply the *conditions precedent*, the conditions the company would have to perform under the agreement before being entitled to a conveyance. In other words—the payment or disbursement, as directed by the board, of the $2,000. When that was done, it could demand a deed.

McKay says, in the last part of his letter of Sept. 1, 1863, (Rec., 91): "It is desirable, if it can be done, that it should be accomplished previous to your October meeting, at which time we shall wish to make some further arrangements with you, having reference to the convenience of settlers, as they may come in, and *to partial payments upon the mortgage from time to time, so the lands of such settlers as pay for them may at once be discharged from its lien and their title be unincumbered.*"

This shows that the mortgage was only to secure the $2,000, else how could the land of settlers be released from its lien, and their title unincumbered on their paying up?

The county had no right to demand a mortgage to secure anything else. The contract binds the county "to assign or convey, at any time, on request to the company, any part of said land, claim or fund, *but if the claim of the county be not fully paid and satisfied*," then a mortgage shall be given.

What does "the *claim* of the county," here mean? Nothing more nor less than the *money* considertion of this contract. It would be a strange use of language, to speak of satisfying the other obligation by *payment*, as "paid." This $2,000 was all the county had a right to demand, before making a conveyance, and therefore, all it had a right to have secured by a mortgage. And therefore, when that sum was paid to the county, the defendant was legally entitled to the deed. As Bixby states, it then became their property, and they had a legal right to it, and the delivery of it was not in violation of the intent of the resolution of the board.

The deed was executed September 7, 1863, but instead of at once giving the mortgage to secure the claim of the county and taking the deed, the company let the deed remain in possession of the county, till the claim which the mortgage was to secure was paid, which was June 19, 1865, then the execution of the mortgage was unnecessary. The county had no right to demand it, and defendant was not bound to give it.

How could the other conditions of this contract be enforced by a mortgage? The taking of the lands subject to the conditions of the grant—settlement and improvment—release of the county and State from liability to reclaim, etc., can hardly be considered a *claim* of the county which if not fully *paid*, must be secured by a mortgage. They were all conditions subsequent, and could not affect the title.

Since this case was tried in the circuit court this *precise point* has been settled by the Supreme Court of the State in the Page county case, 41 Iowa, 129-30.

V.

That the Contract is Without Sufficient Consideration and Unconscionable.

To sustain this charge, the company is charged with 2,010.22 acres, patented to the county at the date of the contract: 1,015.24 acres patented since the contract: 1,027.12 acres indemnity lands, and 3,096.51 acres of what counsel calls a "confirmed grant."

He admits the county has conveyed only the first item of 2,010.22 acres. Why then seek to set aside defendant's title to the other lands? Would it not be sufficient to object to this contract when the company seeks to enforce it? That, it may never do.

We deny the right thus to determine the sufficiency of the consideration. The value of the property at the time is the measure. Suppose A sells B a tract of land for $100, and B should cut timber on the land and manufacture $1,000 worth

of lumber, could A "go back" on his contract, and charge B with $1,100? Or, suppose I purchase, at a great discount, commercial paper, or securities of any kind, that are considered of doubtful validity, and by vigorous or good management and great expense, I succeed in making more out of them than either party anticipated, can the other party require me to account for all I made out of them, or set aside the contract? Now, when the contract was made, the county only claimed to have about 2,000 acres of swamp land actually patented, that were not disposed of. It claims that it turned out to be 2,010.22 acres.

That amount was the only *certainty* that entered into that contract from the county. That 2,000 acres of land was all that the county had title to, and all that it could measure the value of, or sell as a certainty.

The county was not certain of another acre, or of a single dollar or acre of indemnity under the grant. All the rest was simply a claim, that might be partly realized, and might be wholly rejected. Take first, the second item of 1,015.24 acres "*lands in place*"—that is swamp lands in the county—not then patented, and which the Department had for twelve years refused to patent, and which was secured by the company under the provisions of this contract. It was not certain. Plaintiff's position is, that the act of Congress of March 3, 1857, confirmed it, because the selections were reported prior to that date. We answer, that act was only a qualified confirmation. It did not confirm all swamp selections then reported, but only "so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States."

How could the parties to that contract know, and what evidence was there tending to show how many acres of this class of lands "remained vacant and unappropriated, and not interfered with by an actual settlement?" These lands, after the passage of the grant, were, for years, held subject to entry and location, hence the necessity of the indemnity provision

of the act of 1855. And the indemnity claims of Adams county show that many of these lands were disposed of by the government.

And the point we make on this kind of land, as charged up to the company in this contract, is this, that at the time of the contract there was no certainty in regard to it; every acre of it, for aught the parties knew, might have been disposed of, and the claim therefor would then become a claim for indemnity only. They could not point to a single tract and say, *that will be approved.* At that time 3,670.51 acres, lands in place, had been approved and patented (of which 2,000 acres remain unsold by the county). It was reasonable to suppose that the balance of the claim was for indemnity. At any rate the county only knew it held the claim embracing the lands, but how it would be adjusted was wholly unknown. If it became a claim for indemnity, it took all the risks of that class, and was wholly uncertain.

Let us in the next place notice the third item of 1,027.12 indemnity lands. At the time the contract was made, the proof for indemnity which had been filed in the department by the plaintiff had been decided to be insufficient and ruled out. *(Rec. p. 208 to 212: 217 to 20: 226 to 231, and 238-9.)* The whole claim for indemnity stood rejected, and it was uncertain whether any of it could be obtained. The board of supervisors understood the situation just as well as McKay did. They had the same evidence and opportunity. This circular —*Exhibit C*—sent to the State by the Department for the benefit of all concerned, was printed for distribution to the counties by the Register of the State Land Office, on the 11th day of July, about two months before the time of making the contract, and is evidently the circular that Bixby refers to in his testimony as being filed in his office and examined by the supervisors before they knew anything about McKay or the Emigrant Company. That there was such a circular before the board, and in possession of the county, before McKay made any proposition, and without the defendant having sent

it there, is clear from the evidence. The county put in evidence the circular letter of S. P. Lyman, and a letter to the Governor of Iowa, of date May 31, 1862, found on file in the county office, the latter to show that the proof was not rejected, but simply awaiting action. True, that circular indicates that the ruling of the Secretary referred to would not disturb any proof previously filed "in accordance with requirements;" but unfortunately for its position, one month after that date, the Commissioner addressed another letter to the Governor, in which, referring to this previous letter of May 31st, he says, the Secretary has made a re-examination of the subject (the very same case), and has pronounced the proof *insufficient*. *Exhibit "C," p. 229.* He decided to reject all this old proof, and the Commissioner proceeds to lay down the rules to govern the taking of the new proof by that decision required to be furnished. These new requirements, in regard to proof, as established in this circular, were the subject of complaint in the report of Register of the State Land Office of 18665, p. 82, and the circular itself, set out in full in the appendix. We have, in addition, the statement of the Commissioner, in his annual report for 1862, in regard to these very claims, including Adams county, and its proof, declaring, "*Further action on these claims is deferred, under the decision of the Secretary of 27th June, 1862. These, and all other claims of the same nature, resting upon old proof on our files, it is proposed to return to the State authorities for further testimony, in accordance of the said decision, and principles laid down, pursuant to the same, in the instructions of 30th June, 1862.*" *(Skinner's deposition, p. 208, et seq., and Exhibits.)*

We are now simply proving the condition of this indemnity claim at the time the contract was made. We say that the proof was pronounced insufficient and rejected, and new proof required, of a form difficult and almost impossible to comply with. And we prove it, by a witness who at the time was chief of the swamp division and cognizant of the fact;

by the circular of instructions from the General Land Office as to the character of the new proof required; by the official report of the General Land Office of 1862; by the Secretary's report of 1864-5; and also by Savery, under whose direction the prosecution was conducted which resulted in a modification of the decision. We think the evidence on this point sufficient to satisfy the most skeptical.

It is equally clear that the county board knew the condition of the claims.

Bixby swears the circular of instructions requiring new proof was there before McKay was, and the board got their idea from it, not from McKay. He was put on the stand as witness for the county, and they cannot question his credibility.

H. A. Smurr, also witness for the county and a member of the board at the time the contract was made, swears, "that a circular was presented to the board, calling for *new proof*, which should particularly describe the lands, number of acres on each forty inundated or wet, kind of timber, grass, etc., and that it appeared to come from the Department." He says this circular influenced him to vote for the contract—to save further cost—and that it conveyed the idea that "we had to go through the routine of proving up again, and that the board relied upon that circular."

R. H. Schooling, another member of the board, and witness for the county, testifies to virtually the same. J. F. Powell, at that time sheriff, also a witness for the county, testifies, "That he arrived at his conclusion from the reading of a *decision of the Secretary of the Interior, shown him by Bixby*, and that he became satisfied from that, that the county *never would get a foot more of swamp land*." On that circular he based his representations to the people, and they had the circular before the time the contract was made.

That this *printed circular*, referred to by these witnesses, from which they made up their minds as to the value of this claim for indemnity, and upon the authority of which the board

acted, was the circular letter of the Commissioner of General Land Office, of June 30, 1862, there can be no doubt. That circular, based on the Secretary's decision of 27th June, 1862, contains the strictest instructions, and most difficult to comply with, that ever issued from the Department. Exhibit "C." p. 229.

In referring to it in the report of the State Land Office of Iowa, in 1865 (p. 84), the Register says, that the form of proof required by it, is prescribed with "an evident design to render a compliance impossible," and that "under these new instructions, it is believed that not one acre in ten already selected can be secured to the State"

Witness, Powell, referring to it, says that "in it were requirements that it was impossible for the county to comply with." (p. 10.) H. A. Smurr, as we have seen above, testified that the board had a circular from the department calling for *new proof*, and requiring a description of the timber, grass, etc. This was the only circular ever issued calling for *new proof* on these claims. (The old proof had just been rejected,) and by referring to it the court will see that it requires the description and names of the *timber*, *shrubs* and *plants* growing on the land, which was not required in any previous instructions.

In the last Int. to the witness, it appears that a letter of Commissioner of General Land Office, of June 30, 1862, was shown to him, and the witness says, "that is not the letter.' This must be an error in dates. The officer probably should have written the date May 31, 1862. The circular of that date, and sent out by Register State Land Office, June 20, 1862, is put in evidence (Rec. 116, 117) by the plaintiff. Why was this circular of June 30, 1862, withheld, and the other substituted? Was it for the purpose of misleading the court, to think that the proof was all right, when counsel knew, and the board knew at the time the contract was made, that it was rejected?

We have made our point, that the board knew the condition of the claim—not from McKay—but by official communications from the Department.

It is established, therefore, that at the time this contract was entered into, the parties, both McKay and the board, knew that all their indemnity proof *was pronounced insufficient and rejected*, and that the Department required new proof, of a form and character that it was thought "*impossible for the county to furnish.*"

The power to demand the new proof could not be gainsaid. The act allowing the indemnity (March 2, 1862), gives the Department the right to pronounce upon the sufficiency and kind of proof. This claim for indemnity had no definite value. It was simply an unadjusted claim, upon which they were not certain of an acre of land, or a dollar of money. Twelve years had elapsed, and they had failed to get it recognized, and now, after all their expense and trouble, their proof rejected, and they stood just where they did at first, with new difficulties in the way.

Under these circumstances, the board and the people were willing, and desired to get rid of the entire claim on the terms of the contract.

This claim was exceedingly doubtful. Plaintiff claims that McKay so represented it. If he did, he represented it truly. It was. McKay knew it, and so did the board and the people. Powell testifies that he "had an expression from persons in all parts of the county, and that it was the impression that it was the best thing they could do," that "they were selling what they regarded an *uncertainty for a certainty.*" It was so doubtful that no correct estimate could be put upon it—it was of no definite value—and by itself could not have been sold at any price. What, if any thing, could be made out of it, no man could tell.

The subsequent change in the ruling of the Department allowing a *part* of that proof to be used, which was the result of the expenses and efforts of the Emigrant Company makes

no difference. Adams county never could have procured that change, and never would, or could, have procured the allowance of any considerable part of the claim, and that only after more and greater expense.

The evidence shows that *indemnity scrip* was only worth fifty cents per acre, and could be bought at that. (Rec., p. 122.) If the scrip, after being allowed and issued, was worth only fifty cents, what was the claim worth per acre in the conditiod this was—with the proof rejected and *new proof* to make of the character demanded—standing expense, risk and trouble? The whole indemnity claim was not worth twenty-five cents per acre.

The last item, that it is claimed McKay cheated all the people and officers in Adams county out of is what counsel calls "3,091.51 acres of a confirmed grant." This is the land within the railroad limits, and which, before that time, was certified to the State under the railroad grant, the claim under the swamp grant being by the Department rejected. It was not certain that any of these lands could be realized. No suits had then been instituted to test the conflicting claims under the grants. The only certainty was that the title, if secured at all, must be at the end of tedious and expensive litigation, which the county was anxious to avoid.

Not only so, but the act of Congress of March 3, 1857, confirmed the selections of swamp lands then reported to the General Land Offie, *so far as they "remained vacant and unappropriated, and not interfered with by an actual settlement under an existing law of the United States."*

There were seven years from the passage of the grant before this confirmatory act, during all of which time the lands were being disposed of by the government. Up to the time of the recognition of the railroad claim, settlements and pre-emptions were allowed, as well as entries and locations. These facts are known to every one having any knowledge of the history of our land grants. Embodied in official reports, and referred to in judicial decisions, they have become history,

"known and read of all men." (See 22 Iowa, 91.) Such being the case, and known to the parties at the time of the contract, is it reasonable to suppose that they counted on all the land *claimed?* Would any one expect to take all risk and pay $1.25 per acre for the whole claim?

The county has never yet got title to these lands. At the date of the contract these lands were certified to the railroad, and there the title remains, so far as the record in this case shows. Besides that, where is the evidence showing that a single tract of these 3,000 acres remain on the 3d March, 1857, in a condition to be confirmed by the act of that date? How much of it at the end of that seven years "remained vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States?"

We fail to find a syllable of evidence on the subject. There is nothing in this case showing that a single acre of these lands were confirmed by the act of 1857. If so, where is it? Where then is the authority for charging the defendant with "3,091.51 acres under a confirmed grant?"

The only certainty which the county had to dispose of by this contract was the 2,000 acres then patented and unsold. The balance, the indemnity, and claim against the railroad for that within their limits, were simply *claims*, out of which something might, or might not be realized, and to which no actual or specific value could be affixed. They were uncertain, and so regarded by both parties. The witnesses, who were members of the board at the time, testify to this fact; and that in the contract they were getting a "certainty for an *uncertainty*."

Our Supreme Court, in the case of *B. F. Allen vs. Cerro Gordo Co., et al.*, and *Ringgold Co. vs. B. F. Allen, et al.*, to which we have referred, have established the doctrine that the county board have the power, without submission to a vote, to dispose of such claims, if they deem it to the interest of the county, and without regard to the $1.25 restriction.

But were it otherwise, the 2,000 or 2,010 acres, patented lands, is the only item to which, with any regard for reason, it

can be argued, the restriction could be applied. And what has the defendant paid? 1st. $2,000 into the county treasury. 2d. Claims against the county by agents employed in the prosecution of the claims for Adams, Page, and Montgomery, $2,500 00, which, apportioned according to the indemnity scrips each obtained, will make the portion of Adams county about, or nearly, $500.00, besides releasing the county from draining the lands, the expense of new proof taken, and the prosecution of the claim; and, beyond all that, plaintiff claims that by the contract defendant must pay on the Davis judgment $2,700.00 more.

The evidence shows that the cash indemnity allowed on all the claims held by the company, on these contracts with counties, amounts to $73,976.45. It also shows that the company expended in the prosecution of the claims, prior to 1870, $73,000, which included of their expenses in Iowa only the one item of taking new proof.

They paid their general agent $3,500 per year (p. 13,) which, with other Iowa expenses, would make the expenditures of the company, in the prosecuction of these claims, exceed $100,000. The cash received on this Adams county claim, like all the other cash indemnity, was absorbed in the prosecution of the claim. And yet this court is asked, in the name of *equity* and *justice*, to decree this amount to be paid over to the county, with interest, during the time the company has not had it.

Cast out of the account the cash, because it has been consumed as expenses, and then we have 2,010 acres patented, of the claim 1,015 acres lands in place, approved after the contract, and not deeded by the county, and indemnity scrip 1;027 acres. This scrip was issued through the labors of the company, and located by it, and was only worth fifty cents per acre after it was issued, and scrip could be and was bought at that price. If we rate the patented lands at $1.25, the company paid that amount in the $2,000 to the county, and paying the debts incurred by the county in regard to the land, saying nothing about the Davis claim; and surely, releasing

the county from the obligation to reclaim the lands, and the other burdens of the contract, were sufficient consideration for the *claim*, in its condition, the company bearing all expenses and litigation with railroads, etc., and running all risk of getting little or nothing.

Instead of being unconscionable, it was not even a hard bargain for the county. Nay, under the circumstances, it was a good one, the consideration adequate and reasonable, and the county, from its official acts, appeared satisfied with it until April, 1869, and in the meantime ratified and recognized it as a valid contract, time and again.

We have seen the condition of the several items that enter into this account, and the testimony shows (*dep. Skinner and Savery*) that everything made out of these claims was made by extraordinary efforts and expenses of this company, and to come into court boasting of "clean hands," and without offering to compensate or reimburse the company, and demand in the name of *justice* every farthing received, even what had been expended in the prosecution of the claim, requires a remarkable degree of assurance. But that fragments of loose and random expressions among the people, lingering in the memory ten years after the transactions occurred, colored, biased, and possibly germinated and developed by discussions and incidents transpiring since, shall be appealed to to modify the terms or set aside a written contract which, during all those years, and in every way, has been acted upon, treated, and recognized as valid and binding, for *coolness* challenges our highest admiration.

VI.

FAILURE OF CONSIDERATION, AND REFUSAL TO CARRY OUT THE COVENANTS OF THE CONTRACT.

As to the general principle, that if one party fails to perform a contract, the other may rescind, there is no dispute. But if the contract has been partly executed, or the party

cannot be placed in the position he was before, then it cannot be rescinded.

The contract, it is claimed, contains four conditions or covenants the company must perform :

1st. "To expend $2,000 in public works, or pay it into the county treasury by January 1, 1865."

By reference to the contract it will be seen that the defendant was to pay the money by that time in case the board offered to superintend the work. There is no evidence when they offered to superintend the work. Nor did they furnish any specifications and request the defendant to do the work.

But it is agreed, and not denied anywhere, that on the 19th of June, 1865, the company did pay to the county on this contract $2,000, in 7-30's, United States bonds. (*Rec., p. 180.*) This is a sufficient discharge of that obligation.

2d. As to *settlement.*

The company agreed to settle the *lands fit for settlement,* in three, five, and eight years. Afterwards changed. (*Rec., 193.*)

By this modification, on the 7th September, 1864, (a year after the deed was executed,) the provision requiring these lands to be settled in three, five, and eight years, was abrogated, annulled, and entirely removed, and no longer any part of the contract, and instead of it, the company was required simply to cause as many to settle in the county as they would have had to under the former provision, but they were not bound to settle on these lands. They could settle anywhere in the county. Nor were they bound to furnish these settlers in *three, five, and eight years.* The contract is changed in two particulars : *first,* they are not confined to the swamp lands, but may settle anywhere in the county. *Secondly,* the limitation as to time is *entirely removed.* The provision, or clause in which is the limitation as to time, is changed by substitu-

ting in its place the amendment—"be changed and *that it be as follows*," etc.; and in what follows there is no restriction as to time—the time to make the settlement is entirely left out. There is only one purpose the old clause of the contract can serve. That is to determine the number of settlers. If in this amendment the clause, "*in order to fulfill said contract previous to this change*," had been left out, and in its place inserted, "*in order to settle all their swamp lands fit for settlement*," the legal effect would have been precisely the same.

The power of the board to make such a change will not admit of a reasonable doubt.

Then, take the contract as it *is*, and to this objection we answer:

1. There is no time fixed within which to furnish the settlers. The county has no right to say the time has expired, and the obligation is not discharged.
2. There is no evidence showing how many acres of the swamp land were *fit for settlement*, whether a *single tract*.
3. The evidence does not show that under the terms of this contract the company was required to furnish a single settler. Nor if any, how many.
4. The contract is so indefinite in this respect that it cannot be enforced as a legal obligation. How was the question to be determined as to the lands *fit for settlement?* How to be settled—in tracts of forty or farms of 1,000 acres? How many settlers were required—one, two, twelve, or fifty?
5. The obligation, though not such as could be legally enforced, has nevertheless been substantially complied with. The company were to send into the county, to settle there on any lands they chose, a limited number of persons. Even if all the 2,000 acres was fit for settlement, it would make but few farms—about ten or twelve of ordinary size.

Bixby says: "It was no uncommon thing for persons to call on me with letters from the Emigrant Company to buy swamp land." "Such persons," he says, "had not purchased within the last five years, and he does not know that such did at any time." The unsatisfactory condition of the title, and threats to set aside this contract, were no doubt the cause. It however shows one thing—the company was sending men to that county to settle, and if prevented by the county or people it is no fault of the company, and does not make them chargeable with failure. (See Savery's deposition.) Again, we know not how many of such persons did settle on other lands in the county. If enough did, to occupy as much land as there was of the 2,000 acres of swamp land fit for settlement, then the agreement was literally fulfilled. It would require but few, and we may fairly from the evidence presume such to be the fact.

Appellee did attempt to prove that defendant had not settled the *swamp lands*, and some that purchased of the company were not sent by them. But that is foreign to the question. Under the contract they were not bound to settle the *swamp lands*.

Again, Bixby, the agent for selling the land for defendant, testifies that he has sold twenty-five different tracts, amounting to fifteen hundred acres, of these swamp lands, and that all but seven or eight of the tracts are, in part, improved. The witness, on cross-examination, gives a detailed statement of these several sales, description of land, name of purchaser, price, etc. *(Rec. 190-1.)* We have then three-fourths of these lands settled and improved to a sufficient extent to comply with the contract, and an indefinite number of settlers sent into the county. Now we submit whether that is not a *substantial* compliance with the agreement.

6. This requirement is a subsequent condition, the validity of the contract does not depend on its fulfillment, nor does it furnish the least legal grounds for setting aside the contract. *(41 Iowa, 129.)*

3. Condition—to release the county and State from the obligation to reclaim.

It is claimed, in view of chapter 77, acts 1862, that this obligation can be performed only by the ditching and draining of the lands by the company.

For the present suppose this true. When, under this contract, has this duty to be performed? Has the time expired? Or, how much of these 2,000 acres required draining, to make them tillable or inhabitable? Does a single acre? Where the evidence?

These lands came to the county not by actual test as swamp lands, but by act March 3, 1857, which confirmed *dry* as well as wet land, the only condition was that it was *vacant*. and reported among the selections before that act. And a great amount of land that was wet and within the grant in 1850, have become dry by the causes (which are numerous) constantly working changes in the surface and soil of our country. This is a matter every observing man knows. Therefore, we say, we find not a syllable of evidence in this case to justify the court in finding that there is any liability resting on the county to drain an acre of these lands. But if there was, that would be no grounds for setting aside this contract.

If it was a *legal obligation*, who can enforce it? Who is it that is entitled to the benefits of having it enforced? Whose privilege is it? No one, unless it be the *owner*, the one who becomes the purchaser, and *on that theory*, is entitled to have his lands drained. Now, this company (the purchaser from the county) could not enforce the obligation against the county, because it has agreed to release the county and take the land subject to the conditions of the grant. The defendant agreed not to ask the discharge of the obligation at the hands of the county, but to do it itself if it had to be done. And no court would permit the company to so stultify itself as to ask the enforcement of the trust. There is no such obligation resting on the county then, so far as the company is concerned, notwithstanding said act.

Now go a step further. Suppose A purchase and take a deed from the campany, can he compel the *county* to drain the land—or would he not have to proceed against his grantor? And if he could, the county would have recourse on defendant by virtue of this contract. So that, in any event, the county would not suffer. There is no occasion to set aside the contract on that ground to protect its interest.

But we go further, and take the ground that there is no such *legal* obligation resting on the county, and no claim of the kind that can be enforced. This is well settled.

In *Dunklin County vs. Dist. Court, etc.*, 23 Mo., 449, and *Commissioners Whiteside Co. vs. State's Attorney*, 31 Ill., 68, it is held to be merely "*a trust reposed in the good faith of the State*, and not a property trust affixed to the land," and that the enforcement of the obligation is simply a *political* duty, which may or may not be performed, and with which the courts have nothing to do; and in *Barrett us. Brooks*, 21 Iowa, 144, it is held that no one except the *United States*—the *donor*—has the power to enforce the trust. It is, therefore, only a *political trust* to be enforced by the *United States on the State*, and not an obligation that can be enforced in court by any body, nor is it a trust in any manner affecting the title to the land. It affords no grounds for setting aside the contract.

4th. It is insisted that the company has not performed the following conditions in the contract, to-wit: "Any contract now existing between said county and any persons in relation to said land or funds are to be respected and fulfilled by said company, as the board of supervisors shall decide to be just and right," in not paying the claim of F. M. Davis. Let us, therefore, examine particularly this claim, and see whether the defendant was not justifiable in declining to pay it.

The last paragraph in the contract contains a provision excepting from its operations, "the lands F. M. Davis is entitled to by a contract heretofore made" It appears there had been a settlement with Davis for services in regard to the

swamp lands, by which he was to have 600 acres, and scrip or certificates for that amount was given him by the county on such settlement. And this scrip was all located by Davis while Bixby was clerk, but it had not all been located at the time of the contract, hence the exception. This contract was talked about at the time, but no other contract with Davis was mentioned. And it was not known to the clerk, or to any member of the board that he had any other claim. The understanding seemed to be that he had been settled with, and this land was in satisfaction of his claim.

Dep. Bixby, Rec. 186, *et seq.*
Dep. Schooling, Rec. 163.

The witnesses (all that were interrogated on the subject) say this claim was not mentioned, and that they knew nothing of such a claim. Schooling states that something was said about *some one in Washington* having a claim, or something to do with the proofs.

It appears from this evidence that McKay was anxious to ascertain what claims the company would be liable to pay, and there was nothing said of this claim, but it was understood that Davis had been paid off. He had got enough to pay for all the work in the county up to that time. Now look at the matter as it appeared at Washington. From evidence for the county in this case (Rec., 31, 32), F. S. Cooper was the *agent* who furnished the indemnity proofs for Adams county. They were sent from the local land office here, over his oath as such, the letter of the Register and Receiver recognizing him as the agent of the State taking such proof for that county. He is the man *at Washington* that Schooling says was spoken of. McKay then had a right to believe that Cooper was the man to pay for taking these proofs; and he did pay him $130.00, but at what time we cannot ascertain (McKay being dead). The company, in presenting the claim, and examining the papers at Washington, of course saw that Cooper was the agent (the only connection Davis appears to have had, was

that he administered the oath to some of the witnesses as notary public), and was his warrant in paying him. They did, therefore, pay and fully settle this claim with Grinnell, who was acting for and with Cooper.

McKay was, no doubt, surprised at the appearance of a claim by Davis, which he probably first learned by Davis' letter of Sept. 7, 1863. (Rec., 231.)

In that letter Davis proposed to sell *all his interest in the swamp lands and claims of Adams county, and throw in of his county scrip, which could be located on any vacant swamp land in the county, 186.26 acres.* If we rate this scrip at $1.25, we have his entire claim on the indemnity fund and scrip offered for less than $400. McKay doubtless thought this claim was trumped up, and it appears from the circumstances and evidence that he was warranted in doing so.

On 15 March, 1755, Mr. Davis wrote McKay again, making no allusion to his former letter; he this time claims *twenty per cent.* on the indemnity scrip issued.

Prior to the first letter the company had procured the allowance of about 750 acres scrip, and before the last date located it.

The next thing we hear of this claim, Davis goes before the county board—Sept. 6, 1865—claiming *forty per cent on all indemnity*, both scrip and cash, and by representing that his contract with the county judge specified that per cent. as his compensation, procured the passage of a resolution declaring it a just claim against the Emigrant Company. (Rec., 96.)

In the meantime the company had procured the allowance of more indemnity, so that this claim, at forty per cent., amounted to $2,200. This is the claim which he offered for about, or less than $400, one year before.

On the 4th of June, 1866—six months after pronouncing the claim just for that sum—the board of supervisors passed a resolution declaring that the former resolution allowing the claim was passed on the misrepresentation of Davis, that his contract specified forty per cent. as his compensation, when it

did not specify any compensation, and rescinding the former; also declaring that "*there was no specific sum due him, either from the county or the company.*" (Rec., 96.) This was a ratification by the county of the company's refusal to pay it.

In March, 1866, Davis brought suit on this claim against both the county and the Emigrant Company. On motion of the county to be discharged from the case, the plaintiff was put to his election as to which he would proceed against, and he dismissed as to the company, and proceeded to judgment against the county.

On the 19th of March there was filed, as the 4th count to the amended petition in that case, an amendment signed by *Morlidge, Stockton and Harvey*, as attorneys for plaintiff (a *quantum meruit count*), setting out at length Mr. Davis' employment and services, and sworn to by him. (Rec., 82-3.)

This amendment became necessary, as in the petitions previously filed he claimed forty per cent. on a *parol contract*, which, of course, could not be sustained.

Davis recovered in that case on said amendment, or 4th count. He could recover on nothing else. In that amendment, so under oath, he stated and claimed that he took for collection the claims against the United States for indemnity for Adams county, to furnish proof and defray expenses, pay witnesses, and do everything necessary to be done in the prosecution of the claims, and avers that he had *fully* performed his contract had spent a great deal of time, paid out large expenses, had examined and taken proof on 119 tracts of land, and had procured the allowance of indemnity for 4,300 acres, being, in cash, $4,303.00, and scrip, 748.70 acres, and that his services were reasonably worth the sum claimed, $2,200. He thus claimed, under oath, expressly and explicitly as the evidence referred to will verify, that the adjustment and allowance of all this indemnity was the result of *his own labors and expenses entirely*, and the amount awarded was as full compensation for the entire prosecution, under the claim and evidence, showing that no one else had anything to do with it. Davis

was his own witness, and with little corroboration against a *weak defense* (for defendant's attorneys did not even argue the case to the jury), the claim was sustained. The verdict of the jury was warranted by the evidence before them, but the evidence was not warranted by the facts.

The proof in this case shows, overwhelmingly, that all Davis' proof was swept by the board, by the decision of the Secretary, of June 27, 1862, on which was based the instructions of June 30, 1862, and that no part of it would ever have been reinstated but for the vigorous and persistent efforts of this company, and that with all they could do, only a part of it was ever made available.

Also, his own evidence in this case shows that of that proof thirty-four affidavits, being the proof on thirty-four tracts, were furnished and sent through the land office at Des Moines, by S. F. Cooper, the recognized agent of Adams county.

Again, we have it over Mr. Davis' signature, and in his own hand-writing in this case, that he, as notary public, swore the witnesses to 75 affidavits, (being 150 witnesses,) of this indemnity proof, prepared and taken by Mauglin, the agent of this company, and for which he presented his bill to the company. These facts must have been known to him at the time his case was tried.

We have also in evidence a certified copy of one affidavit, as a sample of new proof, used in the adjustment, taken by Hull, another agent of this company, showing that other proof besides that of Maughlin's was taken by it; probably not one thousand acres of the indemnity was allowed on Davis' proof, and it furnished through Cooper. Yet, notwithstanding that the taking of the new proof, and prosecuting this claim to final adjustment, cost this company $6,000, Davis, with a knowledge of the facts, as above shown, claimed, sued for, and recovered 40 per centum on the entire allowance, with interest, on his plea and testimony that it was all the result of his own labor and expense,

and because the company declined to pay it, this suit is brought to set aside the contract.

But we go further, and we think the evidence will sustain us in saying that the six hundred acres of swamp lands allowed Davis on settlement was intended to pay him for all he had done in the swamp land business for Adams county. As we have above seen, nothing was said about Davis having any claim at the time the contract was made. Nothing was said to McKay about it. His settlement was talked about, and his six hundred acres of land reserved from the contract. And two of the witnesses (Bixby and Schooling) testify that they thought Davis was paid, and Schooling, in describing the services for which they settled with Davis, says, "he went on the land and examined it, asking him, Schooling, to be a witness, and that he went to Council Bluffs and attended to the business." This shows that he was taking evidence as to the character of the land, and it could be for nothing else but indemnity proof.

Adams county lies partly in the Council Bluffs land district and partly in the Chariton (then Des Moines). He went to Council Bluffs to have the proof for that part of the county certified by the register and recorder, and sent on to Washington, while the proof for that part in the Chariton district was taken by Cooper, and sent through the office at Des Moines.

Davis then had his settlement with the county and received six hundred acres of land for his services, which was considered abundant compensation.

This defendant paid Cooper and Grinnell for this work, and Adams county paid Davis for all he did, in the six hundred acres of land, and he was not, in justice, entitled to a dollar on that claim. It was an unjust claim, and the company was not, under the contract, bound to pay it. He got judgment, however, and got the whole amount claimed.

The only question is, whether the defendant, having failed to defend and defeat the claim, (probably caused by McKay's

death,) is not bound to pay the county the amount collected on the judgment. Certain it is, that it is no ground for setting aside the contract.

In the bill it is asked, that if not entitled to a rescision of the contract, that defendant may be required to pay the amount paid by the county on the judgment.

From the evidence, it appears that the principal object in bringing this suit is to recover this claim. The county continued to insist on it as a claim defendant was bound by the contract to pay, up to April 22, 1869, when the action attempting to rescind was had by the board, thus ratifying and affirming the validity of the contract, (*Rec., 92, 3-4.*) And of the specifications in their charges of complaint, as grounds for rescinding the contract, the four last all have reference to this claim. The company alleges in the answer that the judgment was obtained by fraud and collusion, and is not, therefore, binding on it. We think this charge is sustained by the evidence. But if the court hold otherwise, we do not see how plaintiff can have relief on that point in this case. If binding, it is a *legal* demand purely, and if the plaintiff has no grounds for a court of chancery to act—no other point sustained that would entitle it to equitable relief—it then had no right to come into chancery, and must seek its remedy at law.

This claim, if valid against the company, is we say a purely legal demand, and plaintiff cannot enforce in chancery by pretending to have an equitable case. It is not as if he had a remedy, either at law or in chancery—nor is the remedy at law inadequate.

If, however, the court, under the pleadings in the case, should feel warranted in decreeing the payment of this claim, it should be without costs, for certainly the company had reason for declining to pay it.

VII.

THE ELECTION.

The bill charges that there was no proclamation or notice of the election on the contract published, and that the contract and deed are void for that reason.

The record of the board does show that the clerk was ordered to publish the proper notices, and that after the election, at the regular time, the board canvassed the votes cast on the question, by an examination of the poll-books in the usual way, and found "there were 241 votes cast on the swamp land contract, of which 161 were for the contract, and 80 were against the contract," and proceeded to declare, "*the said contract is therefore declared valid*, and of full force and binding on the parties." (*Rec., 184.*) They cannot go behind this record. The law made it the duty of the board to provide for the submission of the question, *and conferred on that body the power to declare the result.* And its decision declaring the result of the vote, (especially if in harmony with votes cast) is conclusive on all parties, No one can go behind it to show want of sufficient notice, or illegality or technical objection in the submission.

This position is fully established in *Com'rs. Knox Co. Ind. vs. Aspinwall et al.*, 21 How., 544, and *Bissell vs. City of Jefferson*, 24 How , 299. *Pendleton Co. vs. Amy*, 13 Wall, 298.

And this case furnishes us a very pertinent reason why this principle should be established. We have here the record made up at the time and in the proper manner, of the tribunal whose business it was, by law, to submit the question and declare the result, showing that the question submitted and voted on was the *swamp land contract.* That the votes were cast "for the contract," and "against the contract," and the poll-books of the several townships sustaining the result as *announced.* But nearly ten years afterwards plaintiff attempts to set aside the contract on the *parol evidence* that the people voted, not for and against "the swamp land *contract*,"

but for and against "the *sale* of swamp land." Instead of impeaching the record, it only shows how unreliable is *parol* testimony after the lapse of years.

Though we deem it immaterial to the validity of the contract, yet we insist that the proper notices and copy of the contract were posted as required by law.

First, we have the legal presumption that the proper steps were taken, otherwise the board could not have declared the contract duly ratified and binding.

Secondly, The order of the board of record, commanding the clerk to do it.

Thirdly, His testimony, that he did post copies of the contract and notices in each township. He swears that he posted them, and what he did not post himself, he had others to post, and is satisfied that duty was performed. And then, *McKay paid him for writing copies of the contract.*

Fourthly, It is unreasonable that the clerk, with all the members of the board, and McKay, himself a lawyer, should make and submit this contract without observing the requirements of the law on this point, when they were directly before them in the very act under which they were making the contract.

The order of the board shows that they knew it was required. And if it had not been done, they would not and could not declare the contract duly ratified and binding.

Now it is proposed to overturn all this, the best evidence the case is susceptible of, impeach the records, and the official integrity of the board, by proving nearly ten years afterwards, that men do not recollect of seeing such notice and contract posted, and do not know whether they were or not. The testimony of men from memory after the lapse of years is uncertain, more especially to prove a negative.

There was nothing to impress this matter on the attention and memory of these witnesses. Even plaintiff, in his peti-

tion first filed, does not make the point, or call in question the validity of the election.

But Bixby, had occasion to remember. It was his duty. The law, and order of the court, required him to do it. And he was paid *extra*, to get them prepared in time. These things would impress it on his mind, and he would be much more likely to remember.

The evidence of the other witnessess is not sufficient to overcome even the legal presumption, and if the issue could be tried on such testimony.

A proclamation of election in such case is not always necessary.

41 Iowa, 115.

Having examined all the material points ~~by the counsel,~~ and demonstrated, as we think, that there is no equity in the bill, we now proceed to state briefly a few legal propositions which must defeat it.

I.

STATUTE OF LIMITATIONS.

This suit is barred by the statute of limitations. Rev. 1860, Sec. 2,740, sub-division 3, requires actions "founded on unwritten contracts, those brought for injury to property, or *for relief on the ground of fraud, heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years.*"

This case does not come within the class provided for by any other division of Sec. 2,740, and therefore falls under this, either on the ground of *fraud*, or in the class of cases last referred to. If in the latter, the statute began to run as soon as the contract was made. If, however, it relies on the ground of *fraud*, then the statute began to run as soon as the fraud was discovered. (Sec. 2,741.)

Now to bring the case within this statute it is alleged in this bill that the fraud "*came to plaintiff's knowledge within*

the last five years." The allegation is denied in the answer. But there is not in the case a single syllable of evidence as to when the fraud came to the knowledge of plaintiff or any county officer. *Not a word of evidence on the subject! No effort even to prove it!* The suit must therefore fail, even if there was fraud.

The contract was made Sept. 3, 1862. The election returns were canvassed and announced, and the contract declared binding by the board, Oct. 20, 1862, and the deed executed Sept. 7, 1863.

On any other ground than *fraud*, this suit could not be brought after Oct. 20, 1867 (if it could after Sept. 2), and to bring it within the statute on that ground, the complainant must sustain the allegation in the bill that the fraud *came to its knowledge within the last five years*—and having failed to do it, the case is fully and completely barred, and plaintiff has no standing in court, whatever be the merits of the case, except as it seeks to enforce the contract.

Penley vs. Waterhouse, 1 Iowa, 500.

II.

Executed Contracts.

The contract being executed, and it being impossible to place the parties in the position they were in before, a recision of the contract, whether it was legal or illegal, cannot be decreed; but the plaintiff's remedy, if any, is *at law*.

Rynear vs. Neilin, 3 Gr., 310.
Armstrong vs. Pierson, 5 Iowa, 317.
Moore vs. Bare, 11 Iowa, 198.
Story on Con., Secs. 22, 480 and 979.
Roberts vs. Tallaferro, 7 Iowa, 112,
Fejervary vs. Langer, 9 Iowa, 159.
Brainard vs. Holsaple, 4 Gr., 485.
Zabriskie vs. Cleveland, &c., R. R., 23 How., 400.
2 Parson Con., p. 678.

Baily vs. Milner, 35 Ga., 330.
Levitt vs. Creditors, 22 La., An. 105.
Mercer vs. Mercer, 29 Iowa, 557.
42 Miss., 94 and 121.
43 Miss., 641.
27 Ind., 267.

III.

RATIFICATION AND ESTOPPEL.

It is well settled, by repeated decisions of our Supreme Court, that the boards of supervisors in their respective counties have, under our statututes, and had at the date of the contract in question, authority to enter into such contracts. This contract, therefore, cannot be set aside for want of power to make it.

34 Iowa, 54.
40 Iowa, 460.
41 Iowa, 115.
42 Iowa, 697.

There is no fraud in this case. But if, from any cause, the county might have rescinded it in reasonable time, it is now *estopped*.

"A municipal corporation may ratify the unauthorized acts and contracts of its agents or officers," which are within their corporate powers, but not otherwise. And, "Ratification may be inferred from acquiescence after knowledge of all the material facts, or from acts inconsistent with any other supposition. The same principle is applicable to corporations as to individuals."

Dill. on Cor., Sec. 385.

Not only did they ratify it at the polls, but for seven or eight years the county and all its citizens acquiesced in and recognized the validity of the contract, allowed the company to go on year after year expending its money in pressing the claims to settlement and selling the lands; settled with it, re-

ceived the consideration, and delivered the deed, giving title; and year after year taxing the lands, and in every way recognizing the title as legal, and finally repudiated the contract, only because the company refused to pay an unjust bill.

We insist that the county is estopped to deny the validity of the contract, or to impeach the title it has given, and induced others to take. If the controversy were between individuals on the facts in evidence, no court in the land would hesitate to say the complainant is estopped.

The general rule is, "a party cannot deny the truth of the admissions and acts which were intended to and did influence the action of the other party."

32 Ind., 309.
28 Ind., 203.

"Where the parties to a contract have mutually recognized its binding force upon them, by performance in part, of its conditions, each will be estopped thereby from denying its obligations upon both."

Richmond vs. D. & S. C. R. R. Co., 53 Iowa, 423.
See also *High School vs. Evangelical Synod*, 28 Iowa, 362.
Foster vs. Bigelow, 24 Iowa, 379.
Adams County vs. B. & M. R. R. Co., 39 Iowa, 512.
Miller vs. Land Co., 66 N. C., 503.
2 Pars. on Con. Tit. Estopped, p. 789, *et seq.*
DeZell vs. Odell, 3 Hill, 214.

The same principle is recognized in all these cases, and it has been recognized by this court, and held applicable to a *county*.

Pendleton Co. vs. Amy, 13 Wall., 298.
Comm'rs Knox Co. vs. Aspinwall, 21 How., 539.
Bissell vs. City of Jefferson, 24 How., 287.
Moran vs. Commissioners, 2 Black, 722.
Meyer vs. Muscatine, 1 Wall., 384.
Van Hostrup vs. Madison City, 1 Wall. 291.
Supervisors vs. Schenk, 1 Wall., 722.

It is well settled that if an agent exceed his authority, the principal must disavow the act if he intends to repudiate it, as soon as it comes to his knowledge. And if he fails to do it in a reasonable time, or in any way acquiesce in or recognizes it, he is held to ratify, and is bound by it. And in this respect there is no difference between corporations and individuals.

2 Kent's Com., 615-6.
10 Paige Ch., 130
12 Johns., 305.
8 Pick., 9; 59 and 62.
6 Mass., 195-6.
14 Serg. & Rawle, 30.
19 Johns., 530.
Dunlap's Pal. Ag'cy, pp. 4, 24, 30 and 31.
Dillon on Mun. Cor., Sec. 385.

This principle is recognized in the State of Iowa.

Whiting vs. Stage Co., 20 Iowa, 554.
Gaslight Co. vs. Greene, 22 Iowa, 508.
Farwell vs. Howard, 26 Iowa, 386.

Again. Our Supreme Court have repeatedly held that if a county levies and collects taxes, after contracting to convey the lands, or levies and collects taxes of a party claiming under another grant, it is *estopped* thereby to deny the title of such party, or to claim title in itself.

R. R. Land Co. vs. Story Co., 36 Iowa, 48.
Adams Co. vs. B. & M. R. R. Co., 39 Iowa, 507.
Audubon Co. vs. Am. Em. Co., 40 Iowa, 460.
Ingle vs. Culbertson, 43 Iowa, 274.

And this court, in the recent case of this *Company vs. Calhoun County*, approved and applied the principle, and declared that the law requires good faith in its dealings on the part of a county as well as individuals.

If that principle is applied here, the decree of the circuit court must be reversed. If the complainant were a private individual, instead of the county, or if the respondent were an individual instead of this company, we candidly believe under this evidence there would be no recovery. We claim that the same legal principles ought to be applied, and if they are the decree will be reversed, and the bill dismissed.

FINALLY.

It was argued in the circuit court that the act of the Legislature of 1858, authorizing this contract, legislated a diversion of the grant, and therefore this contract was invalid.

That question cannot be raised in this case. No such issue is made in the bill.

Daniels' Ch. Pr., 4th Ed., vol. 1. p. 327.
Montesquieu vs. Sandys, 18 Vesey, 302.
Glasscott vs. Long, 2 Phillips, 310.
Gresley's Eq. Ev., pp. 231-2.
Brainard rs. Arnold, 27 Conn., 617.
Baily vs. Rider, 10 N. Y. Appeals, 363.

2d. The contract cannot be invalid for that reason, because it is well settled that the act of 1850, known as the "swamp land grant," was an *absolute grant* of the lands to the States, and passed to the title at once. And if an *absolute grant*, then, of course, as courts have already often held, the State took absolute title, clogged with no condition, and can dispose of it and give absolute title; that the *trust* is not one that attaches to the land, but is one reposed in the good faith of the States; and that the execution of the trust is a question of expediency, of political economy, rightfully entrusted to the State sovereignty, and is a question in which no private rights are involved, and one which no private rights can affect.

Barrett vs Brooks, 21 Iowa, 148.
Whitesides Co. vs. Burchell, 31 Ill., 68.
Dunklin Co. vs. District Court, 23 Mo., 450.
Cooper vs. Roberts, 18 How., 181.
Kansas vs. Stringfellow, 2 Kan., 321.
Parks vs. I. C. R. R. Co., 34 Iowa, 189.
Pease vs. Hubbard, 37 Ill., 256.
Newell vs. Bureau Co., 37 Ill., 253.
Allison vs. Halfacre, 11 Iowa, 450.
People vs. Auditor General, 12 Mich., 171.
People vs. Pritchard, 17 Mich., 260.
Fremont Co. vs. B. & M. R. R. Co., 22 Iowa, 91.
Same case in 9 Wall., 89.
Smith vs. R. R. Co., 9 Wall., 89.

The principle established in these authorities is in harmony with the legislation of the several states on the subject. Their statutes will show that nearly all the states receiving lands under this grant regarded their title as absolute, and disposed of them under acts, in many case much more objectionable in this respect than the Iowa act of 1858, more especially Illinois, Missouri, Indiana, Michigan, Wisconsin, Oregon and Arkansas. If this act is, for the reason suggested, invalid, then so are the statutes of these several states, and the titles to millions of acres of land disposed of under them worthless. This legislation of the states, supported by express sanction of their courts, and acquiesced in by the general government, for a period longer than is required under our limitation law to give absolute repose to titles, cannot be disturbed without seriously endangering the title to millions of dollars worth of property purchased on the faith of such legislation and decisions.

In any event the court cannot for that reason, declare this contract void. If the power of disposition in the State is absolute, and the trust rests in the faith of the State to apply the proceeds, then the title of the company is complete, and

the land discharged of the trust. But if the trust ataches to the land, then it takes and holds it subject to the trust, and the remedy is by bill to enforce its execution.

We repeat, this point cannot be legitimately raised in this case, but if it could, it could not invalidate this contract. And we insist that in any view of this case, consistent with the facts, and established principles of law applicable thereto, the decree of the circuit court is erroneous, and ought to be reversed and the bill dismissed.

J. A. HARVEY,
Solicitor for Appellant

SUPREME COURT OF THE UNITED STATES.

October Term, 1878.—No. 85.

THE AMERICAN EMIGRANT CO., *Appellant,*

vs.

THE COUNTY OF ADAMS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

BRIEF OF

N. M. HUBBARD,

of Counsel for Appellant.

L. G. Stephens & Son, Prs., cor. Ninth and G Sts.

IN THE SUPREME COURT OF THE UNITED STATES.

ADAMS COUNTY, Iowa, Appellee,
vs.
THE AMERICAN EMIGRANT COMPANY, Appellant.
} In Chancery, No. 85.

Argument of Mr. HUBBARD for Appellant.

MAY IT PLEASE THE COURT:

The subject of this controversy is a contract entered into by the parties September 3, 1862, and ratified by a vote of the people of Adams county in October of the same year, the substance of which is this: The county agrees to devote its swamp lands, and all the fund and claim of the county on the General Government therefor, and to convey the same to the Emigrant Company. In consideration of which, the Emigrant Company agrees to make any public improvements authorized by law of the value of two thousand dollars. The Emigrant Company released the State and county, and assumed the drainage of the lands; also assumed all contracts made by the county in relation to the lands or fund, and released all claims to lands already sold by the county. As this contract lies at the bottom of this suit, the full text of it is printed as follows:

"Agreement made the 30th day of September, A. D. 1862, between the county of Adams, in the State of Iowa, of the one part, and the American Emigrant Company, by F. C. D. McKay, their general agent for the State of Iowa, of the other part.

The said county hereby devotes the swamp lands belonging to said county, and all the fund and claim of the county on the General Government therefor, to the making of the improvements hereinafter mentioned by said company, and agree to sell, release and convey the same to said company according to this agreement.

The said company agrees to take said lands and fund and claim, and to make for said county any public works or improvements therefor which the board of supervisors may request, and which are authorized to be made thereunto by law, of the full amount and value of two thousand dollars. The specifications for such work to be furnished by the board of supervisors from time to time, as they prefer, at any time after October 1st, 1863, and the work to be finished according to such specifications by one year from the first day of January after the furnishing of such specifications.

In order to ascertain the value of such work and improvements, it is agreed that if the board of supervisors shall offer to superintend the making of such improvements without charge to said company, then said company shall pay to the treasurer of said county the said sum of two thousand dollars, in current funds, as soon as the first day of January, A. D. 1865. And if said board does not choose to superintend the making of said improvements, then the jobs are to be let at public auction to the lowest responsible fair bidder, who shall give ample security for the fulfillment in the usual manner of letting such jobs. No taxes are to be assessed against the property agreed to be sold by this contract while the county holds the legal title thereto, or the equitable title by mortgage or otherwise; but as any of it is sold to purchasers, the same may be taxed. And the company agree to settle all said land fit for settlement with white settlers and purchasers, and by selling farms of the usual average size—one-third thereof in three years, another third in five years, and the whole of said lands in eight years from the ratification of this contract and the canvass of the votes. Any part of said land, fund or claim,

the county will assign and convey to said company or its agents at any time on request, but if the claim of the county be not fully paid and satisfied, the entire interest so conveyed shall be mortgaged back to the county to secure the fulfillment of this contract, unless other satisfactory security be given therefor.

The company takes said lands subject to the provisions of the act of Congress of September 28, 1850, and expressly release the State of Iowa and the county of Adams from all liability in reclaiming said lands or in the draining thereof.

Any contract now existing between said county and any person in relation to said lands or funds are to be respected and fulfilled by said company as the board of supervisors shall decide to be just and right.

The board of supervisors will appoint any agent to transact any business relating to said land, fund or claim which said company or its agent may indicate or request, but in no case shall the county be responsible for the faithfulness of such agent, or for any costs or expenses thereof. No lands for the sale of which the county has given a bond for a deed, or a deed, are included in this agreement, nor the proceeds thereof, nor are the lands to which F. M. Davis is entitled by a contract heretofore made. And if the company obtains the odd sections, (so-called,) those who have claims on them are to be treated as the board would treat them if this contract had not been made.

By order of the Board.

JOHN BARNETT, *Chairman.*
JOHN BIXLEY, *Clerk.*

The American Emigrant Company.

By F. C. D. McKAY,
Their Gen'l Ag't for the State of Iowa."

This contract was made in pursuance of the following laws of Iowa:

"REV. 1860, P. 159, ART. 11.

AN ACT to enable the counties to use the swamp lands to aid in the construction of railroads and seminary buildings. Passed March 22, 1858. Took effect April 21, 1858.

SEC. 1. (Rev. 986.) *Be it enacted by the General Assembly of the State of Iowa*, That it shall be competent and lawful for the counties owning swamp and overflowed lands to devote the same or the proceeds thereof, either in whole or in part, to the erection of public buildings for the purposes of education, the building of bridges, roads and highways, for building institutions of learning, or for making railroads through the county or counties to whom such lands belong: *Provided*, That before any of said lands or the proceeds thereof shall be so devoted to any of the purposes aforesaid, the question whether the same shall be so done shall be submitted at some general or special election to the people of the county.

SEC. 2. (Rev. 987.) The proper officer or officers of any county may contract with any person or company for the transfer and conveyance of any swamp or overflowed lands, or the proceeds thereof, or otherwise appropriate the same to such person or company, or to their use, for the purpose of aiding or carrying out any of the objects mentioned in the first section of this act, which said contract shall be reduced to writing and signed by the respective parties or their lawful, authorized agents.

SEC. 3, (Rev. 988,) requires that such contract must be published four weeks before the election, and provides that the person or company contracting must take such swamp lands subject to all the provisions of the act of Congress of September 28, 1850, and shall expressly release the State and county from reclaiming the lands."

[The State had given the swamp lands to the several counties in 1853.]

At a special session of the Legislature in 1861, an act was passed, approved May 28, 1861, as follows:

"SEC. 1. *Be it enacted by the General Assembly of the State of Iowa*, That the swamp lands in the several counties in the State be, and the same are hereby, placed under the control of the Boards of Supervisors of said counties respectively."

In 1860, the financial affairs of the counties were taken from the county judge and court, and placed in the hands of the Board of Supervisors.

"ACT OF GENERAL ASSEMBLY, (1862,) CHAP. 77, P. 78.

AN ACT to amend section 986 of the Revision of 1860, in relation to swamp lands.

SEC. 1. *Be it enacted by the General Assembly of the State of Iowa*, That section nine hundred and eighty-six of the Revision of 1860 be so amended as to read as follows: That it shall be competent and lawful for the counties owning swamp and overflowed lands to devote the same, or the proceeds thereof, either in whole or in part, to the erection of public buildings for purposes of education, the building of bridges, roads and highways, for building institutions of learning, or for a permanent school fund for the use of the county to which such lands belong, or for building county buildings, or for making railroads through the county or counties to which such lands belong: *Provided*, That before any of said lands, or the proceeds thereof, shall be so devoted to any of the purposes aforesaid, the question whether the same shall be so done shall be submitted at some general or special election to the people of the county: *Provided always*, That no county is hereby released from its obligation to make the necessary drains and levees contemplated by the act of Congress passed September 28th, 1850, and the act of the General Assembly of this State passed January 13th, 1853."

[This act took effect April 5, 1862.]

These are believed to be the only statutes of Iowa necessary to be considered.

Nearly seven years after the contract had been made, and after it had been substantially executed on the part of the Em-

igrant Company, with the exception of the failure of the company to pay what they allege to be a fraudulent claim on the swamp fund of about $2,700, made by one Frank M. Davis, the plaintiff filed a bill in the State district court to rescind and set aside the contract, on two principal grounds: 1st. Want of power in the county to make the contract, together with certain alleged irregularities in the execution of the power; and, 2d, fraudulent representations by the Emigrant Company, and gross inadequacy of consideration. The case was transferred to the Federal court for Iowa, tried there, a decision rendered for the plaintiff setting aside the contract, and the Emigrant Company has appealed to this Court.

The alleged want of power to make the contract, and the alleged irregularities, are so thoroughly argued in the brief of Mr. Harvey, already filed, that further discussion is deemed unnecessary.

The principal question is, whether the contract, viewed in the light of all the facts known on the 3d of September, 1862, is so inequitable and unconscionable that a court of equity ought to set it aside. This involves an inquiry into the situation of the swamp land claims of the State, of Adams county, and the relation of the Emigrant Company to them as purchasers.

After the passage of the swamp grant of 1850, the Land Department gave the several States the option to determine the extent of the grant from the field notes of the original surveys, or to appoint agents to make examinations and selections. Wisconsin and Michigan chose the former method, and settled with the Government, of course, without difficulty. Iowa and the other swamp States chose the latter method, and the consequence was, so far as Iowa was concerned, the quantity of swamp lands in each county depended upon the elasticity of conscience of the agent who made the selections. That no power of elasticity should remain undeveloped, many of the countries paid the agent from one to three dollars for each forty acre tract he should find "wet and unfit for culti-

vation." Under the stimulus of such incentives the "high prairies" were rapidly submerged, until, as early as October, 1861, the Commissioner of the General Land Office writes the Secretary of the Interior that the "claims under the swamp grants of 1849 and 1850 have now reached in round numbers nearly sixty million acres, and * * claims are still coming before us for such lands 'in place,' as well as for indemnity, where sold or located," &c., (record, 236.)

From time to time, as these abuses became more apparent, the Land Department became more strict and exacting in regard to the character of the proof. By May 31, 1862, the Land Department, by circular letter of that date, declined to receive any more new proof of the kind formerly required, and laid down new rules on the subject, but inferentially stated that proofs already then taken and on file would be considered, (rec., 118.)

On June 30, 1862, under the opinion of the Secretary of the Interior of 27th June, it was decided to reject all proofs then taken and on file, and adopted a still more rigid form of proof. This decision was communicated to the Governor of Iowa, and on July 11, 1862, was communicated by the Register of the State land office, by circular letter, to the several counties of the State, (record, 229, exhibit C.)

Here the swamp land business for Iowa wholly closed until a partial modification of the decision of June 30, 1862, was had some time in 1864, by the efforts and arguments of the Emigrant Company, as will be hereafter shown.

After these adverse decisions, the utter hopelessness of the further allowance of Iowa swamp claims of any kind is apparent from the report of the Register of the State land office for Iowa made in 1865, (record, 238.) On page 239, record, folio 760, the Register says:—"The State, at great expense, proceeded to furnish, through its agents, a large amount of proof in the form and substance agreed upon, showing the character of many of the lands selected as swamp lands, and disposed of

by the Government since the 28th of September, 1850, to be such as was contemplated by the act of that date, but no sooner was this done, and the instructions fully complied with in the premises, than the Department repudiated these proofs, and prescribed a new and different form of proof, with an evident design to render a compliance therewith impossible; for, under these new restrictions, it is believed not one acre in ten already selected can be secured to the State. This adverse decision was rendered on the 27th of June, 1862, while many counties were getting up and forwarding proof according to the old form."

This adverse decision of the Secretary of the Interior had the effect to stop further selections and affidavits.

Again, Harvey's report says, (record, p. 243, folio 773:)—"Early in the administration of this grant, the Department seemed to receive the impression that Iowa was acting in bad faith; that she had selected a large amount of dry lands, and that, as if conscious of being in the wrong, and wishing to avoid difficulty with the General Government, she had transferred her interest to the counties, and the counties to private speculators and land-sharks, who, by means of this grant, are endeavoring to perpetrate a gigantic fraud upon the General Government. I say such seems to have been, and still to be, the impression at the Department at Washington, and to its prevalence in a great degree, if not altogether, may be attributed the difficulty we there met with."

It may be properly remarked here that not until about the time of the rejection of all the Iowa proofs, in 1862, did the Emigrant Company make any contracts with any of the counties for their swamp lands or swamp claims, or have anything to do with making proofs for the same. Whatever was done to create the "bad impression" at Washington was alone the work of the counties of Iowa and their several agents, who made the swamp selections and proofs. Such was the general situation of the swamp land business at the time the

contract was made with the Emigrant Company by Adams county.

Notwithstanding the modification of the decision of June 27, 1862, allowing the claims of the Emigrant Company to some extent on the old proofs, in 1864–5, a large number of the counties of the State were unable to get the Department to take up and examine and pass upon their claims, and in consequence thereof Congrsss passed an act, approved March 5, 1872, (17 U. S. Stat. at large, 37,) requring the claims of Lucas O'Brien, Dickenson, and ~~sent~~ other counties in the State of Iowa as formerly presented their selections to the Surveyor General to allow or disallow such selections. This fact alone shows that there were real difficulties in the way of adjusting the Iowa swamp claims, and that it was not plain sailing even after the modified rulings.

The condition of the swamp land interests of Adams County at the time of the contract was substantially this: May 29th, 1854, the county had filed with the General Land Office selections of swamp lands for about 13,760 acres, as shown by the record, pp. 62 to 65 inclusive. August 13th, 1860, the State of Iowa patented to Adams County 2,914.98 acres, and June 5th, 1861, 763.53 acres, in all 3,680.51 acres, which had previously been patented to the State by the United States as enuring under the swamp grant to Adams County. At the date of the contract in controversy the county still owned about two thousand acres of such land, the remainder having been previously sold to divers persons.

During the years 1860 and 1861, Frank M. Davis had taken some proofs under the forms then in force, for the purpose of obtaining the remainder of the swamp selections or indemnity therefor, but the kind or amount of such proof is not shown by the record. And this is the proof that was rejected as insufficient by the decision of June 30, 1862.

Nearly four thousand acres of the Adams County selections were in the odd sections, and at the time of the contract had been certified by the Secretary of the Interior as passing to the Bur-

lington and Missouri River Railroad under the act of Congress of May 15, 1856, granting lands for railroad purposes in Iowa.

As the railroad grant was passed prior to the confirmative swamp grant of March 3, 1857, and as the swamp selections of Adams County had not then been approved except the 3,680 acres above stated, it was understood and believed by everybody that no part of odd section lands could be obtained. And the evidence for obtaining the indemnity for them stood rejected as insufficient by the decision of June 30, 1862, so that it may be safely said that at the date of the contract there was no apparent ground to believe that Adams County would obtain any further swamp lands or indemnity therefor. It is important to bear in mind the exact situation of the swamp claims of Iowa at this time, because the plaintiff insists upon looking at the contract and judging of its want of equity from the stand point of 1865 and 1866, after the decision of June 30, 1862, had been practically overruled and abrogated, and the decision of May 31, 1862, had been re-instated as the basis of action by the Land Department; and also after the decision of this court in Wolcott's case, 5 Wal. and Fremont county, Iowa, vs. Railroad, 9 Wal., where it was held that the proviso in the railroad grant saved from the operation thereof all lands reserved or otherwise disposed of, and inasmuch as the swamp grant was a present one it took precedence of the railroad grant.

Prior to 1862 the Emigrant Company was organized in the State of Connecticut, with an authorized capital of one million dollars, and with six hundred and forty thousand dollars paid up. (Rec. 224.) Its principal place of business was New York City, and its principal business was the transportation of emigrants from Europe, partly by its own steamships and partly by other lines, and a general foreign exchange and passenger ticket business. In the persecution of this business agencies were established in Sweden, Norway, Ireland, Scotland and other countries, to induce and furnish facilities for emigration. Naturally growing out of this business it became

important to find locations and lands for emigrants on their arrival. Finding that the several counties of Iowa had selected a large quantity of land as swamps, which could be purchased more cheaply than government lands, especially as they had facilities for settling them at once, early in 1862 the company commenced making contracts with the counties for such lands, and before the close of the year they had entered into agreements with sixteen counties, all substantially like the contract in controversy. Some of them were made before perhaps, and some after the adverse decision of June 30, 1862, above mentioned. It is probably true that the Emigrant Company believed that it could obtain more swamp lands for the several counties than a multitude of special County and State agents, who had thus far wholly failed to obtain further land or indemnity, and the sequel shows that they judged rightly. And the question now is, whether upon this state of facts, and without the power of human foresight at that time, to see beyond these facts, was the contract in any sense either unfair, unjust or unconscionable? It is confidentially submitted that it is not.

II

The next important inquiry is, what happened between the 3d of September, 1862, and April, 1869, when this suit was begun?

Early in 1863 appeared the report of the Commissioner of the General Land Office for 1862, in which he says in reference to a number of indemnity claims in Illinois and Iowa: "Further action on these claims is deferred under the decision of the Secretary of June 27th, 1862. These and all other claims of the same nature resting upon old proofs upon our files, it is proposed to return to the State authorities for further testimony in accordance with the said decision and the principle laid down pursuant to the same in the instructions of June 30, 1862." (Record 209, folio 651.)

The first case taken up for hearing before the Department, after the ruling of June 30, 1862, was that of Cass County, Iowa. New proofs were taken in accordance with this ruling, the form of which was made, and the case presented and argued by Mr. Savery and Mr. Skinner on behalf of the Emigrant Company. The case was successful, and some ten thousand dollars of cash indemnity allowed. Mr. Baker was at that time State swamp land agent, and as soon as the Cass county case was decided he adopted the form of proof made by the Emigrant Company, and used it to obtain indemnity for all the counties in Iowa in which the Emigrant Company was not interested. (Skinner's testimony, record, 209, (bottom) and 210.)

The next step was to obtain a ruling abrogating or modifying the decision of June 30, 1862. The claim of Adair County was selected for this purpose, which was also presented by the Emigrant Company, and after repeated agreements by counsel for the Emigrant Company, such decision and ruling was finally obtained about August 1864. (Record, 211, bottom.)

The decision is found in the report of the Secretary of the Interior for 1864–5, in these words: "In the adjustment of swamp indemnity we have exacted from those furnishing proof a rigid adherence to the instructions of June 30, 1862, transcript of which is in appendix, and all proof for indemnity since taken has been critically tested by these instructions. They have, however, been so far modified by the ruling of the Department in the case of Adair County, Iowa, as to admit for consideration claims for indemnity prepared under former rulings, even althongh they may have been filed after the date of the instructions of 1862, where it may be satisfactorilly established that the proof had been fully completed prior to that date." (Record, 211.)

Two other important decisions were obtained from the Department by the efforts and arguments of the counsel for the Emigrant Company as shown by the answer of Skinner to interrogatory 20, record, p. 212, as follows:

"A rule existed sanctioned by the Department that the field notes of the public surveys should show affirmatively that the lands were swamp and overflowed in order to the approval of the lands in place or allowance of indemnity. Through the efforts of the agents of the American Emigrant Company, the rule was so modified as to permit approvals, and grant of indemnity of all tracts not shown by the field notes to be rolling prairie."

"Again it had been held by the Department that no indemnity claims would be allowed except for tracts located or entered with cash prior to March 3, 1857, and where the lists embracing the tracts had been reported prior to March 3, 1857. The question was presented to the Commissioner of the General Land Office, claiming that the act of 1857 provided indemnity for all lands disposed of regardless of the time of entry or date of report," (of selection samp.)

The case went to the Secretary of the Interior, the Commissioner having refused the claim, and the Secretary concurred in the views given by the Commissioner. Subsequently another case of the same class was presented, which he, the Commissioner, declined to allow in like manner, and the case went to the Secretary on appeal. This officer referred the matter to the Attorney General after arguments had been made by Mr. Ruggles and Mr. Lyman, of New York, and Mr. Savery. This resulted in the opinion of the Attorney General dated April 20, 1866, appearing on page 382 of vol. 2 of Land Laws, Regulations and Decisions, by Lester. This decision in brief, is, that indemnity is provided only for lands sold or located before the 3d of March, 1857, without limitation as to date of report of such lands as swamps."

How much was realized by the eighty-three counties of Iowa in which the Emigrant Company had no interest in the swamp lands, by virtue of these three decisions, the record does not disclose, but it must reach into some millions of acres in land, and scrip and indemnity. The result to the Emigrant Com-

pany in sixteen counties is shown by the testimony of Mr. Skinner on pp. 214 and 215, record, as follows:

"The claims reached to something over 500,000 acres, this being the quantity of lands claimed as enuring to the several counties with which they had contracts." * * * * The 500,000 acres constitute the aggregate of selections reported by the Surveyor General to the Commissioner of the General Land Office, made up from the reports of the agents of the several counties with which the American Emigrant Company had contracts, and are wholly of the selections made by the agents aforesaid, prior to the dates of the several contracts, the American Emigrant Company having nothing to do with making the selections. Of this body of 500,000 acres, about 140,000 acres of lands in place have been patented to the State. Scrip has been issued out of this aggregate of 500,000 acres for 71,976.59 acres. Cash indemnity claims have been paid for lands included in this aggregate of 500,000 acres, amounting to $73,976.45. 50,235.17 acres had been certified under the railroad grant of 15th May, 1856; 68,184.14 acres were located with warrants after the 3rd March, 1857. 15,789.71 acres have been entered with cash since the 3rd March, 1857. Nearly 70,000 acres remain vacant, or have not been approved or patented under the swamp land grant. Claims remain unadjusted for lands disposed of by the government, before the 3rd March, 1857, amounting in the aggregete to about 72,000 acres, part for cash and part for lands.

"*R. int.* 3. State, of the several items above, whether anything has been realized either by the counties or by the Emigrant Company to date, except the three items of 140,000 acres in place, 71,616.59 acres of scrip and $73,976.45 cash?

R. ans. 3. Nothing beyond these three items mentioned above has been realized. The entire amount of scrip, viz: 71,616.59 acres has been located in this state."

The cost of the litigation, and the expenses of the Emigrant Company to obtain these rulings and modifications from the Land Department, are testified to by Mr. Savery, who assisted

in auditing the accounts, and his testimony is wholly uncontradicted. The aggregate of these expenses from 1862 to 1870 amounted to about $73,000. They consisted of attorneys fees, salary of Mr. Savery and Mr. Skinner, travelling expenses and hotel bills, and the amount paid for new proofs in Iowa, for the sixteen counties in which they had acquired the swamp land interest, under the instructions of June 30th, 1862. Judge Ruggles was paid about $10,000, and Gen. Lyman about $20,000, as attorney's fees, for making arguments before the Land Department, and attending to the adjustment of these swamp claims. And this sum of $73,000 does not include the sums paid to the several counties for their swamp land interests, (record 223, folio 704.) It thus appears that all the cash indemnity ever received by the Emigrant Company has been expended for the purpose of procuring the same. The cash value of the 71,616 acres of scrip obtained was about fifty cents per acre, as shown by Savery's testimony, (ans. and x-int. 16, record 222.) As will soon appear, Adams County received at least one dollar and twenty-five cents per acre for all the swamp lands obtained by the Company, and while the record does not show, the reported cases that have been tried in the State courts do show, that, practically, the whole 140,000 acres of lands received cost the Company not less than $1.25 per acre. Thus it appears that the net profit to the Company consists of the 71,616 acres of scrip, all of which has been long ago exhausted by the harrassing litigation of ten of the counties who disposed of their swamp interests by contracts with the Company, substantially like the one under consideration.

Let us now see what the Company obtained under its contract with the plaintiff.

It is agreed (record 206, folio 640) that the State patented lands to Adams County, allowed by the General Government as swamp and as indemnity scrip, subsequent to the contract of September 3, 1862 with the Emigrant Company, as follows: November 18, 1869, 938.87 acres; September 3, 1862, 747.12 acres, (located with indemnity scrip;) November 29, 1867, 200

acres, (scrip;) May 31, 1870, 80 acres, (scrip;) in all 2,043.35 acres. The Emigrant Company has received in cash indemnity, on account of swamp selections in Adams County, the sum of $6,075.11, (record 53.) The title to the 2,043.35 acres received by the county since the contract and procured by the Company, is still held by the county, and they have refused to convey to the Emigrant Company.

If we count the lands to which the Emigrant Company is entitled under the contract, at $1.25 per acre, the account will stand thus.

For 4,043.35 acres of land	$5,054.19
Cash indemnity received	6,075.11
Making a total of	$11,129.30

The Emigrant Company has paid out the following sums in the execution of said contract and in expenses necessarily incurred in obtaining the indemnity above received by them, and the lands patented to the county since the contract, viz:

For the 2,000 acres in place	$2,000 00
Paid J. B. Grinnell, as agent of Adams County, prior to contract, for services about their Swamp claim, (record 220–1.)	800 00
One-sixteenth part of the $73,000 attorneys fees, &c., above	4,562 50
There is still claimed as due under the contract, the judgment obtained against the county for swamp services prior to the contract, by Frank M. Davis, and which, if just, should be paid by the Emigrant Company	2,700 00
Making in all the sum of	$10,062 50

It is objected, and the court below so held, that nothing should be allowed the company by way of compensation for its services and expenses in obtaining the further lands, or cash, or script indemnity. It is not denied that the money, ($73,000,) was expended legitimately in honest efforts to obtain

the lands and cash and scrip. Why it should not be counted as one of the expected, necessary outlays of the company is not easy to understand. And why such expenses should not be allowed by a Court of Equity is simply incomprehensible to us.

So the case on its merits comes to this complexion at last: Whether you look at the contract in the light of all the facts known on the 3d September, 1862, and all that human foresight might then discover, or whether we look at it in 1869, when it was fully developed, so that it could be judged by "hind-sight"—which the learned counsel insists upon applying to the case—there is nothing thus far developed that ought to impeach this contract on the ground of gross inadequacy of consideration, or mistake, or fraud.

III.

The Davis Judgment.

It is conceded that if the Davis judgment for $2,700 represents a valid claim against the county for services performed in relation to their swamp lands prior to the contract of September 3, 1862, it was assumed by the Emigrant Company, and they must pay it. It is also conceded that if the judgment was fairly obtained and without collusion between Davis and the county, it is conclusive, and the Company must pay it.

The Company, however, insists, first, that the claim of Davis was "trumped up" and grossly fraudulent; and second, that the *judgment* rendered upon it was collusive and fraudulent. The burden is upon the Company to show both these facts, or it must be paid before the Company is entitled to a specific performance of the contract by requiring the county to convey the further lands in place, and the indemnity lands of which she now holds the title. But should this court find that the judgment was fair and therefore conclusive, it does not warrant a recision of the contract nor give the plaintiff any standing in a court of equity for two reasons: First, the payment of the claim of Davis, if he had any, was a condition

subsequent and not precedent to the contract; and second, the Emigrant Company is solvent, and the county has a plain, speedy, and adequate remedy at the law.

First. Is the Davis claim "trumped" and fraudulent?

The only services he ever rendered were in 1860 and 1861. Schooling, one of the Board of Supervisors, says they settled with him and gave him about six hundred acres of swamp land, (record 163, folio 497.) Bixby, clerk of the District Court from 1862 to 1868, says Davis was settled with and received five or six hundred acres of swamp lands prior to the contract with the Emigrant Company, and these were the lands reserved by the contract as belonging to Davis, and that the scrip for such land was located while he was clerk, (record 186, folio 575.)

In August, 1864, the ruling of the Department was made abrogating the ruling of June, 30, 1862, which reinstated the old proofs for consideration, and soon after the scrip and cash indemnity were allowed. (Record 211, bottom.)

On September 7, 1864, Davis wrote to McKay, agent of the Emigrant Company, as follows:

"F. C. D. McKAY: I will sell to you all my interest in swamp-land claims in Adams county on the United States for $610, provided you accept this proposition and give me notice inside of thirty days from this date.

Items of my Claim.

First. County scrip for 168.26 acres.

Second. My part of scrip on county claim on United States.

Third. My per cent. of cash claims on United States, if accepted, to be paid for within one month after notice.

Yours truly, FRANK M. DAVIS.

Quincy, Adams County, Iowa. (Record 231.)"

This offer was not accepted.

Early in 1865, $4,303.45 of the cash indemnity was allowed, and the warrant for same bears date March 21, 1865, (record, 111.) Promptly Mr. Davis wrote the following letter:

"QUINCY, March 15, 1865.

DEAR SIR: I have a claim of twenty per cent. upon swamp land scrip issued to Adams Co., which is unadjusted. I understand the said county have lifted the scrip and located it. I also have a claim of $7.20 for seventy-two notary certificates, at ten cents each, to affidavits concerning swamp lands procured by Mr. Maughlin. I desire the claims adjusted and settled.

Quincy, Adams county, Iowa.

Yours truly,

FRANK M. DAVIS."

On the 5th of September, 1865, Davis put in a claim of forty per cent. of the cash and scrip indemnity, and the same was certified to be correct by resolution of the Board of Supervisors of Adams county, (record, 96) This certificate was made on the representation of Davis that he had a contract with W. A. Shields, county judge, to that effect, dated September 10, 1860. Afterwards the Board found it was not true that Davis had any such contract with Shields, and on June 4, 1866, they passed a resolution rescinding the resolution of September 5, 1865, and declaring that the county owed Davis nothing. (record, 186.) Davis had evidently been forewarned of this action of the Board, as he had begun his suit against the county and the Emigrant Company on the 20th of March previous, (record, 76, folio 236.) In his petition, which was verified, he claimed forty per cent. of the *cash and scrip* indemnity, being the sum of $2,202.01, by virtue of a verbal contract with Shields, county judge, made September 10, 1860.

The limitation of such actions is five years by the Iowa statute, and Davis filed an amendment to his petition, claiming on a *quantum meruit*, alleging that he had rendered 106 days' services, and expended $115 for expenses, and that by such labor, &c., he had procured the cash and scrip indemnity, heretofore shown to have been procured by the Emigrant Company, (record, 83.) By his letter claiming fees for seventy-two affidavits

procured by Manghlin, who was an agent of the Emigrant Company, he shows that at least thirty-six forty-acre tracts had been proved by the company, after the contract of 3d September, 1862.

The testimony is not in the record upon which this judgment was rendered Bixby testifies that the evidence was that Davis spent ten or twelve days at field work, and some time in his office, but just how much he did not recollect, (record, 187, ans. to ints. 26 and 27.) There then remained unpatented about 240 tracts of forty acres each of the whole selections of 13,760 acres.

The printed form then in use occupied about a half sheet of foolscap, and only required the witnesses to state that they were acquainted with the lands—knew the corners, and that the greater part of each tract was either overflowed or so swampy that the same was unfit for cultivation. Very little writing was required to fill the blanks. An ordinary clerk could have filled them all in a day or two. There can be no pretense that any professional services were rendered, except such as Capt. Lambro always rendered to a ship strayed from a Spanish argosy in a storm. And we can only apologize for Davis as Byron did for Capt. Lambro:

> "Let not his mode of raising cash seem strange,
> Although he fleeced the flags of every nation;
> For into a prime minister but change
> His title, and 'tis nothing but taxation.
> But he, more modest, took an humbler range
> Of life, and in an honester vocation,
> Pursued o'er the high seas his watery journey,
> And merely practiced as a sea-attorney."

It is evident that Davis had no contract for forty per cent. of the indemnity. The Emigrant Company, two years before he wrote McKay offering his claim for $610, had assumed all contracts made by the county in relation to their swamp lands. The Company was responsible, and Davis knew it.

At the time he wrote his second letter, if not when he made his first offer, he must have known of the ruling of the Department that allowed the consideration of the old proof. This, as he now claims, rendered the obtaining of the indemnity for cash and scrip certain. He is not susceptible to the charge of excessive modesty in demanding money. The conclusion is irresistable that this whole claim of forty per cent. is an afterthought, or he would have put in his claim to the Emigrant Company much sooner. Indeed, he only claimed twenty per cent. in his last letter. But when he found over $4,000 of cash had been obtained, he doubled his per cent. If this claim was not an afterthought, but actually existed as a fact, it is conclusive evidence that even as late as 1864 and 1865 he had very little faith that anything would ever be recovered. Frank never offers for $400 a claim worth $2,200—for deducting the value of the scrip he was going to "throw in," the offer amounts to about that sum. If this last theory be the true one, then the Emigrant Company paid enough for so doubtful a claim.

Was the Davis judgment collusive and fraudulent?

A reading of the transcript of this case found in the record pp. 74 to 99, will leave little doubt on this subject. The suit was begun against the county and the Emigrant Company. Counsel for the Emigrant Company appeared and moved to compel plaintiff to elect which defendant he would prosecute and to dismiss as to the other, as the petition showed a misjoinder. He promptly elected to dismiss the Emigrant Company. However, Moore, who appeared for the Company, remained in the case and assisted in its trial, as he says, (and as Savery denies), at the request of the Company, and that he was paid by the Company. Millard was attorney for the County, tried the case, and was paid by the County. The case was tried to a jury. No argument was made to the jury for the County, (record 187, ans. to int.) An appeal was taken to the State Supreme Court, and dismissed on plaintiff's motion for want of prosecution. A feeble attempt was made to re-

instate the case, which was overruled December 15, 1868, (record 97.) On January 7th, 1869, the County paid the judgment. In April afterwards this suit was begun. The Board of Supervisors called on the Emigrant Company to pay the judgment. They refused. The verdict was a palpable fraud, and could not stand on the pleadings. The only claim was for 106 days service and $115 in money. Collusion or gross negligence could only account for the failure to set aside the verdict, and either one was sufficient on which to refuse payment. From the moment Davis learned that a large cash indemnity was secured, he cried, "Mischief is abroad; now let it take its course!" He beset the Board of Supervisors to repudiate the contract. All through 1865–6–7–8 the air was filled with these threats, so much so that no one would purchase lands of the Emigrant Company, for the people gave out that it had no lands to which it could give title, (record 221, x Savery.) Finally, on the 22d of April 1869, the Board of Supervisors fulminated a proclamation with many whereases, (being all the arguments Davis has since used to show why the contract was repudiated), and appointing Davis attorney to bring suit. On the 28th of April the suit was begun.

It seems incredible that human assurance can say that this judgment has any honesty in it. The fact is that in nearly every county in the State some attorney, like Davis, had undertaken to make proofs to obtain the swamp lands. None of them followed the proofs to Washington or expected to do so. When the proofs were all rejected in June, 1862, the prospect was considered hopeless for obtaining further lands or indemnity. But as soon as the Emigrant Company, by new proofs and by the old, and by long labor and arguments had been successful, the Davis' became "active, vigilant, and brave;" they claimed to have accomplished all the good results, and plied the Board of Supervisors for the spoils. Nobody equals this but Falstaff. After running his sword through the thigh of the dead Hotspur, he valiantly lugged him into camp, and

throwing him down says: "Hal, if you want any more Hotspurs killed you must kill them yourself!"

IV.

THE FOUR THOUSAND ACRE CONFIRMED GRANT—FALSE REPRESENTATIONS—ILLEGAL ELECTION—THE DELIVERY OF THE DEED WITHOUT A MORTGAGE BACK—SETTLEMENT OF THE LANDS.

The above indicate the grounds, except those already considered, upon which the plaintiff relies to set aside the contract.

1st. The four thousand acre confirmed grant. The plaintiff insists that at the date of the contract, about 4,000 acres in the odd sections had been confirmed to the State by the act of Congress of March 3, 1857, but they were also certified in October, 1861, as inuring under the railroad grant of May 15, 1856, and the Land Department held to the ruling that they did pass under that grant until the decision of the Wolcott case in December, 1865, 5th Wallace and the Fremont county, Iowa, case, 9th Wallace in 1867. The railroad still claim title to these lands. Adams county sued the railroad to recover them in the Iowa courts. The Supreme Court of Iowa decided, October, 1874, (39 Iowa, 507,) that the county is estopped from claiming them, because they taxed them as belonging to the railroad from 1861 to 1868 inclusive, and demanded and received such taxes, following a like decision of that court in Story county agt. Railroad Land Company, (36 Iowa, 48,) and ordered the petition of the county dismissed. After filing the *procedendo* in the lower court, the county asked leave to file an amended replication to the answer of the railroad company, pleading the estoppel, on the ground of newly-discovered evidence, in the nature of a mistake in taxing the lands. The replication alleged "that the Board of Supervisors of said Adams county, at the time of the alleged taxes to defendant by plaintiff on the lands in question, were ignorant of the fact that either the local assessor or county clerk had placed any such lands on the tax list, or suffered them to be placed there;

that they never did at any time order them taxed, and that in receipt of money for taxes on railroad lands *it was understood and believed that all lands upon which money was so received were lands belonging to the railroad grant of May* 15, 1856, and that any entry of taxation or assessment of the lands in question was made through mistake and inadvertence," &c. It is further alleged in substance that such defense was unknown to the county at the time of filing the former replication, which denied the taxation, and that the mistake was not discovered until the month of December, 1874, and by due diligence could not be earlier discovered. The affidavit of the treasurer of the county in 1868, 1869 and 1870, also that of Frank M. Davis, Wesley Holman, the then treasurer of the county, and also that of H. G. Ankeny, a member of the Board of Supervisors in 1869, were filed in support of the facts alleged in the new replication. The lower court refused leave to file it, and entered a decree in accordance with the opinion of the Supreme Court dismissing the plaintiff's petition.

The case again went to the Iowa Supreme Court, was reversed, and plaintiff allowed to file the amended replication. The opinion was filed October, 1876, and is reported, (44 Iowa, 335.) It seems to have escaped the notice of the Supreme Court of Iowa that the lands were taxed from 1861 to 1868 inclusive, and that no officer of the county during any of these years, save the treasurer for 1868, was brought forward to show that during the seven other years the lands were assessed and taxed that it was so done by mistake or inadvertence. It may not, and probably did not, appear on the record; at all events the Supreme Court did not discover that *all* the railroad lands in Adams county were taxed, and that every one *must* have known that they included the lands claimed by the county as swamp. These facts appear quite plainly in 39 Iowa, 507. If this be so, the replication admits that the county supposed and believed during all the years they taxed these lands that they belonged to the railroad, for the replication says, "It was understood and believed that all lands upon

which money was so received were lands belonging to the railroad grant of 15th of May, 1856." And this is the point which the Emigrant Company have always insisted was the understanding of all parties until the Fremont county case, *supra*, was decided. The case has not again been tried, so far as the reports of the State show. That the case is a doubtful one, with the chances against the county thus far, cannot be questioned. The lands were certified under the railroad grant in October, 1861, and they have ever since claimed title to them, as shown in the opinion, 39 Iowa, *supra*. It is therefore probable that unless Adams county shall hold the lands in the suit now pending against the railroad company before the courts of Iowa, the Emigrant Company can never obtain the title to any of these odd-section lands. For no independent action will now lie by the Emigrant Company against the railroad company to recover them, because the equitable title of the Emigrant Company accrued (if the contract shall be sustained) September 3, 1862, and actions to recover real property are barred in ten years by the statutes of Iowa.

Besides, there is another insuperable objection to charging that the Emigrant Company ever could, or ever will receive any benefit from these odd-section lands. The last clause in the contract in controversy reads as follows: "And if the Company obtains the odd sections, so called, those who have claims on them are to be treated as the board would treat them if this contract had not been made."

It appears from the opinion, (39 Iowa, *supra*,) that the County had sold a portion of these lands to actual settlers, but what portion of them is not stated. It is manifest that a part or all had been disposed of, or such a clause would not have been put into the contract. For aught this record shows, *all* of them have been disposed of, and it is still in the power of the present, or any future board to say whether the settlers and purchasers shall pay little or much, or nothing at all, for it is "so nominated in the bond."

The plaintiff insists that the contract is unconscionable, and

to prove it counsel points to these odd sections as a confirmed grant that the Emigrant Company will recover if the contract is confirmed. The burden is upon the plaintiff to show *how* the Emigrant Company is, or was to receive any benefit from them.

Again, there is another clause in the contract which absolutely excepts from the contract all swamp lands that have been sold by the county, namely: "No lands for the sale of which the County has given a bond for a deed, or a deed, are included in this agreement, nor the proceeds thereof."

There is no evidence in the record to show how many of these odd sections were sold prior to the contract. All may have been sold. The court ought not to presume, in the total absence of proof, that the Emigrant Company has received, or ever can receive, anything for these lands, and especially when the object is to show that the amount realized under the contract is grossly inadequate to the consideration paid. Such a rule would be shifting the burden to the defendant to show that the contract was fair and equitable. Before the Emigrant Company is charged to have obtained any right to these odd sections some better title must be shown than is now apparent. The present title of the Emigrant Company looks no better than the title to that vast country pointed out from the top of a high mountain nearly nineteen hundred years ago.

Second. False representations. The only representations made by McKay were that it was doubtful whether anything more could ever be realized from the swamp claim of the county. Grant that he so stated. First. It was merely his *opinion*, and no statement of any fact. The board had the same knowledge upon which to base an opinion that McKay had. The testimony shows that the board took the same view of the matter, or they would not have disposed of these claims for the consideration named in the contract. Second. The opinion might not only be honestly entertained, but it was a reasonable and fair inference from the decision of the Department of June 27, 1862, in regard to proofs. In order to constitute actionable

false representations the party making them must know them to be false; the other party must be ignorant as to the truth of them, rely upon them, and be misled by them. It is idle to discuss the sixty pages of testimony put into the record by plaintiff on this subject. There is not the faintest auroral dawn of fraud in the case. Third. All these representations, or rather opinions, were made proir to the contract, and were merged in it. It seems there was some talk among the people that timber was to be planted and fruit trees to be set out upon the lands, and that McKay so represented. It is enough to say that the contract was posted prior to the election, and it contained nothing of the kind. It is true, however, that the contracts for the sale of these lands by the Emigrant Company did contain a clause providing for the planting of timber and fruit trees. Perhaps this idea was suggested by a circular letter put forth by the Emigrant Company dated July 24, 1862, found on pages 114, 115, and 116, record.

Third. The illegal election—the delivery of the deed without a mortgage. These questions are so fully argued in the IV and VII paragraphs of Mr. Harvey's brief that nothing further need be added. It may be observed, however, that it could not have been the intention of the parties to take a mortgage to the county to secure the draining and settlement of the lands, because with such a mortgage upon the lands it would be simply impossible to sell them to any man in his right mind, and thus the company would be unable to perform the very conditions—subsequent ones it is true—of the contract.

A word may also be added as to the want of posting the contract. There were 161 votes cast "for the swamp land contract," and 80 votes against the contract. The record is silent as to the number of votes cast at that election. If the full vote polled had not voted on this contract it was the duty of the plaintiff to show it. Silence on this subject is equivalent to an admission that the full vote of the county was cast on the contract. If this be true, the notice was sufficient in every

other respect except as to the contents of the contract, and as to that the plaintiff has shown everybody knew the substance of it.

Fourth. Settlement of the lands. The only lands the Emigrant Company obtained title to was the 2,000 acres patented to the county prior to the 3d of September, 1862. Something over 1,000 acres were subsequently obtained of lands in place, but the county never conveyed them to the Company, nor have they conveyed the odd-section lands.

The company is not at fault for not selling the lands they did not obtain. Of the 2,000 acres which was conveyed to them by the county in 1863 they have sold about 1,500 acres to actual settlers between 1865 and 1870, and all except a few tracts have beee improved. On page 190 and 191, record, the persons to whom sold and when sold, and the improvements made are set out in detail. Astute counsel says they were not settled by *em*igrants but by *im*igrants, and therefore the contract ought to be rescinded. The contract does not require emigrants, but settlers.

The testimony of Mr. Savery in answer to int. 19, record 220, furnishes the reason why no *em*igrants were sent to Adams County, and what the Company have done in the way of introducing emigrants into Iowa, to wit:

"Immediately after contracting for these lands in Iowa, the agents of the American Emigrant Company in Europe were instructed by the company to direct emigrants to Iowa, and several special agents were sent to different parts of Europe from Iowa, to direct the attention of emigrants to the advantages this State affords, and particularly to these counties where we had purchased land. A large number of emigrants were thus induced to settle in Iowa, to which tickets were furnished by the company. In the Spring of 1864, '65,–'66, numerous colonies were founded of Swede and Norwegian emigrants, and agents of such colonies came to Iowa to inquire into the facts, and, going into Adams and many other counties to examine land,

were told by residents of such counties, but particularly in Adams, that the American Emigrant Company had no lands in that county to which they could ever perfect their title, for the county had or would repudiate their contract with the county; and for this reason the efforts to settle emigrants in Adams County, and several counties almost wholly failed. In other counties that kept their contract in good faith with the American Emigrant Company, the company have settled large numbers of emigrants, selling only to actual settlers upon the lands purchased of the company, and have continued to do so up to this time. Some 40,000 acres of land have thus been settled by the Company. In order to obtain settlers the Company have sold lands thus purchased at from fifty cents upward per acre, and paid the expenses of special agents to Europe and a salary, and have given free tickets to large numbers from Europe to Iowa; and the settlement of such parties in Iowa, and particularly in the county named, has been defeated by the citizens and officials of such counties. The amount of money thus expended on account of Adams County I am unable to state. I remember distinctly of a special agent being sent to Adams County and remaining there for sometime for the purpose of arranging matters with the county, so as to enable us to settle emigrants there, but without success, for the reasons above stated."

REPLY TO ARGUMENT OF APPELLEE.

The brief of the appellee has just been received and read. It is impossible to reply, *seriatim*, to the many unfair and garbled statements of the facts. The persistency and volubility with which the cry of fraud is maintained on every page could only come from a man who has himself received 600 acres of land and $2,700 in money for a few days' cheap services in looking at lands and a few more in filling the blanks of printed affidavits.

The burden of the brief is, that at the time the contract was made all that the Emigrant Company subsequently obtained in lands and indemnity was coming of its own accord by the proofs taken by Davis. It is stoutly denied that any decisions of the Department stood in the way. With flagrant vehemence it is boldly charged, in the very face of the truth, that the decision of June 30, 1862, did not apply to Adams county. To put this at rest the concluding clause of the June 30 letter is submitted. "The proof in the cases herein referred to" (Louisa and Fremont counties) "being similar to that submitted in other cases on the files of this office, the Secretary's decision *will apply equally to all*, and they are therefore rejected as insufficient. *These instructions are designed to supersede those of the 31st ult.*, and you will be pleased to acknowledge the receipt hereof," (record 231.)

The decisions of both the 31st of May and 30th of June, 1862, were communicated directly to the Governor of Iowa, which shows they were to apply to the whole State. The proofs of Louisa and Fremont Counties were after the form previously prescribed by the Department, and no word in the decision indicates that they are not. This decision requires a *wholly different form of proof* from that taken by Davis in the Adams County case. Compare the new form required, (record, folio 730–1–2, p. 230–1), with the Adams County proof,) rec. 130, G.)

Again, it is insisted that the Emigrant Company did nothing to obtain the modification of the rulings of the Department, and that our delegation in Congress interposed and accomplished it. To prove this the report of the Register of the Iowa State Land Office is produced. It is doubtless true that our delegation lent its influence to that end. The record, however, shows that the Register of the State Land Office gave due credit to the Emigrant Company for having made an elaborate argument on the question of indemnity, and published the same in the appendix to his report. Speaking of the Emigrant Com-

pany, he says: "They have prepared and printed an elaborate argument (* * *) presenting this whole question, and showing conclusively that under a fair construction of the acts relative to this grant the State is entitled to indemnity for all swamp lands disposed of by the Government since September 28, 1850, whether the selections were made since or prior to the 3d of March, 1857."

A brief outline of what was done and the manner of doing it is stated in answer to int. 10, record 218, by Mr. Savery, as follows:

"Adams county was among the first claims that we presented. There had been some proof made in that county which we found in the Department, which had been ruled upon by the Department as insufficient for various reasons, some of which were that it was informal and in direct conflict with the field notes of the Government surveyor. We then adopted this policy, as the first step in the prosecution of these claims, to carefully inspect the proof made upon each tract and select such proof as seemed to contain less of the objections upon which it had been rejected, and to make a test case before the Commissioner on this portion of it.

The Commissioner ruled against this limited amount and rejected the claim. We then took a small list of swamp selections in Cass County, such as were shown to be swampy by the field-notes of the Government survey, and made new proof upon the spot, in strict compliance with the later rulings of the Department. This was referred by the Commissioner to the Secretary of the Interior. We then took an appeal from the Commissioner to the Secretary in the Adams County case. And after several hearings before him, in which we presented both cases, we entered into a compromise, which was this: That a certain portion of the old proof that had been filed, which come up to a certain standard in accordance with former instructions, should be adjusted, and after that date no old proof should be recognized, but that all proof thereafter should

be made in strict compliance with the new instructions. The Commissioner and the Secretary of the Interior still adhered to their former decisions, that the field-notes should govern as the rule in the adjustment of the Iowa claims. And upon this basis the claims were prosecuted. This was about April, 1863, and we procured for Adams County, under this compromise, indemnity scrip for about 750 acres. This was all that was realized until about March, 1865, when we procured from the Secretary of the Interior a further modification of the rulings of the Department, and procured a further allowance, this time of cash indemnity, of $4,303.45; and in August, 1866, 200 acres further of indemnity scrip, and in 1868 a further allowance of 80 acres."

No one can read this record and fail to notice the constant conflict that has existed between the General Government and the State of Iowa and her several counties for the last twenty-five years on this swamp land question. Nor can they fail to observe the conflict between the several counties and their agents and those to whom they have disposed of their swamp land interests. In the long and somewhat bitter strife over them, neither the State nor the counties seem to have realized any considerable benefit from them; nor indeed has any one, except, perhaps, Mr. Davis and such others as may have occupied the same relation to them. Certain it is that the Emigrant Company has been remorselessly fought out of all the value they could have hoped to realize. First, by the Land Department; and second, by the counties with whom they contracted. Defeated in their plans and hopes to settle these lands at once by such litigation, they have since been eaten up by taxation. Add to this the vast shrinkage in values of real estate since 1873, and their enterprise lies wrecked and stranded. There is little left to fight about now, except to vindicate themselves from the persistent charges of fraud. That the company intended to make money is doubtless true. And who does not?—except, perhaps, Mr. Davis. But it must be admitted that their plan contemplated also a large benefit to the

State and the counties through the rapid settlement of the most undesirable portions of it. At the time they began, the homestead act had just been passed; they must obtain the lands cheaply or not at all; they were partly in the hands of the Davis', and it was manifest that the counties, with such agents and the Land Department hostile to all such claims, would realize little or nothing. The company took them *cum onere*,—and the burden is still upon them. Deprived by litigation to sell or to settle the lands, they have shared the burdens of the fraudulent taxation that has, and still does, bear so heavily upon nearly all the western counties of the State. The records of this court are alive with examples of this oppressive taxation. While buffalo chips still remained for camp fires, a few adventurers squatted in an uninhabited county, organized it, elected themselves to office, issued large amounts of county warrants and bonds, (ostensibly to build court-houses and bridges,) sold them to *bona fide* purchasers, and then "silently folded their tents and stole away"—to steal again. These "pirates on the high prairies," between 1855 and 1865, loaded Western Iowa with a spurious debt, estimated at $3,000,000, for which the counties realized absolutely nothing. There is no parallel to this municipal larceny anywhere. Boss Tweed gave back to New York *something* in the way of public improvements; these poor counties not a farthing. Nothing in the annals of guile, covin, and deceit compares with it. And the Emigrant Company, in nearly every county where they obtained swamp or other lands, are aiding to pay this debt.

The worst thing that can be said of the Emigrant Company is that they attempted to obtain lands as swamp lands which were not such, and if this be true the fault is with the agents of the State and counties who selected them and not with the company. But is this really so? In 1850 Iowa had less than 150,000 people. To-day she has nearly two million.

In 1850 what were large streams filled to overflowing with mighty, rushing waters, are now insignificant, lazy brooks, with scarcely sufficient water to wash the sheep in the spring time. The Des Moines River—the Amazon of Iowa—was then be-

lieved to be navigable, and millions were squandered to dam and slack-water her for that purpose. Now, during most of the year, she has scarcely water enough for the "cattle upon a thousand hills" to drink! Cultivation has brought about all this. And does it not account for much of the conflict between the State and the Land Department in regard to the swamp lands? The Emigrant Company knew, as all knew, in 1862, that the settlement of these lands, *itself* would drain them. In 1853 when the Iowa Legislature passed the long act prescribing the rules and manner of draining the swamp lands, and provididg for a State Drainage Commissioner, the fact that cultivation of the country alone could reclaim these lands was not known. One reading that act now would suppose a second Holland was to be dyked.

It is respectfully submitted that this case, upon all the testimony, and judged by all the surrounding facts and circumstances, shows that the conduct of the Emigrant Company rested upon the best intentions toward the people and interests of the State and the several counties, and that its contract with the plaintiff was fair, just, and equitable, and ought to be sustained.

N. M. HUBBARD,
Of Counsel for Appellant.

APPELLEE'S BRIEF.

SUPREME COURT OF THE UNITED STATES,

No. 85.

The American Emigrant Company,
Appellant,

vs.

The County of Adams.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FRANK M. DAVIS,
R. P. LOWE,
Solicitors for Appellee.

Beresford, Printer, Washington, D. C.

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STATEMENT.

First. In 1854 the county authorities of appellee caused to be selected and reported, under oath of a county surveyor, to the Commissioner of the General Land Office, through Warner Lewis, surveyor general, a list of swamp lands in said county, containing $13{,}674\frac{93}{100}$ acres of swamp land, under the acts of Congress and the State Legislature of Iowa, familiar to the court, which was duly marked on the tract books of the Commissioner, and reserved from sale as swamp lands in March, 1855. (*See* printed record, pp 62–68 and 121–125.)

Second. This reported list of lands was confirmed as swamp

by act of Congress of the 3d of March, 1857, and on the 13th of August, 1860, patent No. 27 was made to appellee for $2{,}914\frac{98}{100}$ acres of the said lands, and on the 5th of June, 1861, a like patent, No. 59, was made for $765\frac{53}{100}$ acres, making a total of $3{,}680\frac{51}{100}$ acres. (See record, p. 206.)

Third. In 1861 the county authorities caused indemnity proof to be prepared at a large expense to secure from the United States an unadjusted claim for cash indemnity in the sum of $6,075.66, and land indemnity of $1{,}027\frac{12}{100}$ acres, also, proof of the swamp character of 4,460 acres lands in place. A sample copy upon one forty-acre tract is printed in full in record, pages 130, 131, and 132, with the letter of transmittal of Stewart Goodrell, which proofs were the basis of the adjustment of the indemnity afterwards allowed, as certified by Drummond, Commissioner. (See record, p. 120, letter "G.")

Fourth. Prior to the 3d of September, 1862, the county had disposed of $1{,}670\frac{29}{100}$ acres to actual settlers, and at that date owned all the residue—being $2{,}010\frac{22}{100}$ acres patented lands in place, and $10{,}094\frac{42}{100}$ acres of selections unadjusted.

Fifth. On the 3d of September, 1862, the contract was made with the appellant, Exhibit "A" to petition, (record, p. 43,) which was voted on by the people October 14, 1862, and adopted, (record, p. 72.) And on the 21st of October, 1862, James C. Savery was nominated swamp land agent of the county to the Governor, (record, p.73, D.) And on the 10th of April, 1863, indemnity certificate No. 8 for 748 acres was sent to the Governor of Iowa, (record, p. 129, F.) On the 24th of June, 1863, Savery qualified as such agent, (record, pp. 142 and 143.) September 1, 1863, McKay, agent of appellant, who executed the contract on their part, wrote a letter to appellee's board of supervisors, requesting a *deed* to be made on the condition that a mortgage be executed back to appellee to secure all the conditions of the contract on the appellant's part, and subject to the conditions of the agreement, for the whole $3{,}680\frac{51}{100}$ acres of patented land as aforesaid, with reservations excluding the 1,670 acres pre-

viously sold by appellee. (See record, p. 91.) And on the 7th of September, 1863, the board made the *deed* as an escrow, and deposited it with the clerk of the board, John Bixby, to be delivered on the execution of the proposed mortgage. See Exhibit "B" to bill, (record, pp. 45, 46, 47, and 48.)

Sixth. January 16th, 1865, cash indemnity was adjusted on 3,442 acres of cash entries in the sum of $4,303.45. (Record, pp. 127 and 128.) In February, 1865, the Emigrant Company constituted appellee's clerk, who held the deed, John Bixby, *their agent*, and he commenced to act in their employment. (Record, top page 181.) And in March following, draft No. 249 for $4,303.45 was sent to the governor of Iowa, which sum was paid to Savery as agent for Adams county, June 9th, 1865. (See record p. 111.)

Seventh. June 19th, 1865, the appellant paid appellee $2,000, through Bixby, the clerk, on the contract, and thereupon, the clerk caused the deed to be recorded *without* the execution of the mortgage. (See agreement upon evidence, record, p. 180. Bixby's evidence, record, p. 181.)

Eighth. September 5th, 1865, the agent and attorney for the county, who had had charge of the swamp land business and taken proof in 1861, upon which the indemnity was allowed, having returned from the war, presented a claim for $2,200 for services, and expenses in taking such proofs, which the board of supervisors of appellees decided to be just and right, and made an order upon appellant to pay the same. (Record, top page 96.) This order was presented to the appellant who refused to pay it. (See deposition, record, p. 133.) A litigation followed which ended in a judgment in favor of the agent establishing the full claim; this appellant furnishing an attorney and assisting the appellee in the defence, and agreeing to abide the event of the suit, and pay the judgment, if any. An appeal to the Supreme Court of Iowa was dismissed, and upon execution the appellee was compelled to pay $2,735 in judgment and costs and attorney's fees. Frequent demands were made of appellant by appellee to pay said judgment under the contract, but appellant

always refused. (See record, pp. 74–90 and 96, 97, 98 and 99, for full history of that suit.)

Ninth. September, 1868, a demand was made by appellee upon appellant to pay this judgment. (See deposition of acting chairman of the board, record, p. 171.) January 9th, 1869, a formal demand by a resolution and committee was made, the demand refused and claim denied. (See record, p. 90.) January 30th, 1869, a second committee and third demand was made and refused. (See record, p. 93.) After waiting over two months the board of supervisors of appellee, on the 21st of April, 1869, passed a rescinding resolution, and directed this suit against appellant. (See record, pp. 93, 94 and 95.)

Tenth. The suit was begun in April, 1869, in the State court, and was transferred in 1870 to the Federal circuit court, when an *amended* bill was filed. The cause was heard upon oral argument, October, 1872, when printed arguments were ordered. At the May term, 1873, a reargument was ordered. The cause was continued under advisement till May 1874, but final decree was not settled till October, 1874.

Eleventh. This suit was tried in the circuit court with the cause of "Wright county" against the same appellant, since decided in *this* court in February last, Justice Miller delivering the opinion.

Twelfth. In the circuit court the Wright county case was advanced on the docket at request of appellant to be tried with this cause. Decrees were entered at the same term. Appeal taken at the same time. The bond in the Wright county case was $5,000, in this cause $10,000. Transcripts were sent up on the appeals at the same time. The filing fee was paid in Wright county case, and *not* paid in this cause. A motion to dismiss was sustained by this court, but the cause was afterwards reinstated. Appellant submitted the Wright county case in print, but demanded oral arguments in this cause, whereby the causes have become separated.

Thirteenth. Pending the litigation between the old agent and the appellee upon the claim for taking proofs in 1861, which lasted from March, 1866, to September, 1868, and since then, much of the unadjusted claims have been settled, and cash and land indemnity has been paid and patents issued. The printed record in this cause shows that at the date of trial in the circuit court, appellant had received and would be entitled to receive under the contract the following lands and moneys:

	ACRES.	CASH.
1. By the deed made Exhibit "B" to bill, (record, p. 45.) - - -	2,010.29	
Cash value at minimum price, $1.25 - -		$2,512 80
2. By patents of lands in place, made since the deed above, No. 160, No. 176, and No. 199, as agreed to, (Record, p. 206.) - - - -	1,016.23	
Cash value, at $1.25 - - - - -		1,270 29
3. By indemnity land patented since date of deed. By patents No. 8, No. 80, and No. 90. (See record, bottom page 206, top 207, - - - -	1,027.12	
Cash value at minimum price - - -		1,283 90
4. Cash indemnity received by Savery June 10th, 1865. Draft No. 249. (Record, p. 137, Exhibit "A.") -	3,442.77	4,303 45
5. Cash indemnity received by Savery November 10th, 1866. Draft No. 1,250. (Record, p. 138, Exhibit "C.") - - - - - - -	635.57	794 58
6. Cash indemnity received April 10th, 1867. Draft No. 1,721. (Record, p. 138, Exhibit "D.") - - -	782.11	977 63
(As to all these drafts see also record pp. 109–113.)		
Total inuring to appellant under contract, - - - - - - -	8,914.09	$11,142 65

Excluding the lands described in the deed we have what has accrued out of the *fund* and *claim* named in the contract, for which *nothing* was paid,	6,903.77	8,629 71
There is an unadjusted claim for lands in place, for - - - - - -	3,090.55	3,863 20

Fourteenth. Savery has retained all the money and paid it to appellant, except the $2,000. And the appellee has refused to deed any more land, though often requested to do so by appellant.

Fifteenth. The appellee has received $2,000, and paid out upon the judgment for costs, &c., $2,735.50. (See record, bottom page 171, top page 90.) Appellee is out of pocket by reason of appellant's failure to pay charges on indemnity proofs, $735.50 more than has been received. A portion of the deeded land has been sold to residents of the county at $2.50 per acre and higher, and all of the lands are worth from $2.50 to $10 per acre. (Record, pp. 190, 191.)

Sixteenth. Not a single settler has ever been settled in the county by appellant, nor has any ditches, drains, levees or improvements of any kind ever been made by them.

THE BILL sets forth the following seven grounds for rescinding the deed and contract which will be presented in their order:

1st. That the sale of swamp lands in bulk before draining, and the sale and assignment of unadjusted claims on the Treasury of the United States are illegal and void.

2d. That the contract and deed are based upon considerations prohibited by statute, and are illegal and void.

3d. Fraudulent representations in securing the contract, and inadequacy of considerations.

4th. Failure to perform the contract.

5th. Entire failure of the consideration by appellant's willful acts.

6th. That the delivery of the deed was procured by fraud.

7th. Ignorance of the officers of appellee as to the subject-matter of the contract, and fraud and bribery in its procurement, and in conducting the election.

THE ANSWER admits the receipt of $6,075.66 cash indemnity, and admits that the county owned the lands and claims as stated in the bill, and that none of them have been improved for cultivation under the swamp land act.

APPELLEE'S HANDS ARE CLEAN.

The appellee is a public corporation of limited powers, acting only through agents created, and authorized by public laws of which all persons must take notice. It cannot, therefore, be guilty of *fraud*, and no proof is offered thereon. Its agents did everything in their power to aid appellant in the execution of the contract up to the date of appellant's refsual to perform it.

1st. Savery was appointed agent at the request of appellant, the same meeting the vote was canvassed. (Record, p. 73.)

2d. The deed was made on the blank form furnished by McKay at the time and in the manner requested by his letter of September 1, 1863, and deposited exactly as directed. (See record, pp. 91 and 45.)

3d. To facilitate settlement the contract was modified so as to allow the emigrants, to be sent in the county to settle upon lands other than swamp lands, as contemplated in the original contract. (Record, p. 14, Exhibit "E.")

4th. At the request of appellant the Davis claim was rejected and litigated in the name of the county as an act of strategy in appellant's interest. These are the only requests ever made, and compliance was fully and promptly accorded in each case.

APPELLANT'S HANDS ARE NOT CLEAN.

Aside from the volume of evidence of frauds, misrepresentations, concealments, illegalities, and overreachings

upon the part of the appellant in procuring the agreement and vote of the people, the execution of the deed and its delivery, the possession of the indemnity cash and its retention, which will be hereafter fully treated, let us look at the agreement to see how it has been complied with.

Five imperative stipulations were to be performed by its terms.

1st. To pay appellee $2,000 cash.

2d. To settle the lands by sending in emigrants.

3d. Release the county from draining the land by draining it themselves.

4th. To pay just charges against the indemnity proofs.

5th. To execute a mortgage on the lands to secure the performance of all the conditions of the contract.

Not one of these conditions has been performed, nor has there been any pretense of performance.

The $2,000 paid the appellee was appellee's *own* cash indemnity, out of which appellant cheated and defrauded appellee. The $4,303 indemnity cash having been received June 9, 1865, and payment of the $2,000 of it to appellee was on June 19, 1865. It was not appellant's money paid appellee, for the agent Savery retained the remainder $2,303 of appellee's money after the payment, and turned it over to appellant. In justice and equity it was the appellee who paid appellant $2,303, instead. Appellant has not paid a dollar of their *own* money to appellee at any time; nor expended a dollar except what they paid in bribery of officers.

Appellant has not sent into the county a *single* settler, nor drained a single *acre* of land, nor have they paid *just charges* against indemnity proofs, even after they had been adjudged legal and valid by the highest courts of the State in the suit in which they were both party and privy. But, after judgment, denied the debt, and refused to pay it, after repeated demands, leaving the county to meet out of her own means a judgment, from which there was no escape or appeal, over seven hundred dollars greater than the entire consideration named in the contract. Thus virtually and morally robbing

the appellee of the very last *farthing* of the proceeds of the lands, the seven hundred dollars extra debt, and the county yet bound in law to drain the lands. The appellant in its answer denies that it assumed to so drain them.

Appellant has been greatly benefited by the contract which is, as it avers, *now* fully performed on its part. It has cash admitted $6,075; the 2,010 acres of land worth $5,000 more; and there is still 5,134 acres unconveyed lands worth at a low estimate $40,000 more, making a net profit of not less than $50,000 to appellant.

Whilst appellee is out that much, and not a "*single groat*" to exhibit as a *quid pro quo* for this remarkable financial transaction.

I. THE SALE OF THE SWAMP LANDS IN BULK BEFORE DRAINING, WITH UNADJUSTED CLAIMS, FOR INDEMNITY CASH UPON THE TREASURY OF THE UNITED STATES IS ILLEGAL AND VOID.

To bring before the minds of the court the exact force of the argument, so much of the act of the 28th September, 1850, as relates to the question, modified to the State of Iowa, is here given, as follows:

"*Be it enacted by the Senate and House, &c.*, That to enable the State of (Iowa) to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

"2*d*. *And it is further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plan of said land described as aforesaid, and transmit the same to the governor (of Iowa;) and at the request of said governor, cause a patent to be issued to the State therefor; and on that patent the fee simple to said lands shall vest in the said State (of Iowa,) subject to the disposal of the Legislature thereof; *Provided, however*, that the proceeds of said lands, whether from sale or direct appropriation in

kind, shall be applied exclusively, as far as necessary, to the purposes of reclaiming said lands, by means of levees and drains aforesaid."

See 9th Statutes at Large, p. 519.

The above is all of said act necessary to quote. It may be observed here, however, that *no* list or plat of any of the lands in suit were ever made, except as they have been patented. The above grant was formally accepted by the Legislature in February, 1851. On the 13th of January, 1853, they were granted to the respective counties in which they were situated, subject to the conditions of the acts of Congress, and such laws as the Legislature might pass in the future. By the same act a Drainage Commissioners' Office was created and county surveyors appointed to lay out drains; after draining, the lands were to be appraised and sold at auction to the highest bidder, in small tracts. The act fully provides for reclamation of the lands in detail, and no objection has ever been, or can be, made to this action of the State in disposing of the lands. It is, by the act, impossible for the proceeds of the land to be misapplied. The counties are the local municipal organizations and component parts of the State under the absolute control of the Legislature, were very proper agencies, in the minds of the Legislature, to execute the trust. This point was expressly decided in the case of *Montgomery County vs. The Burlington and Missouri River Railroad Company*, 38th Iowa, 210, nor is it questioned in this cause. Several provisional and enabling statutes were passed in the subsequent years of 1855–56 and '57, all tending directly and obviously to the efficient and faithful execution of the terms of the swamp land grant. They are all found in the Revision of 1860, from section 918 to 985 inclusive.

But in 1858 on the 22d March, the *Legislature*, (not the State,) passed the following obnoxious act:

"SECTION 1. *Be it enacted, &c.*, That it shall be competent and lawful for the counties owning swamp and overflowed lands to devote *the same or the proceeds thereof, either in whole or*

in part, to the erection of public buildings for the purpose of education, the building of bridges, roads, and highways, or for building institutions of learning, or for making railroads through the county or counties to which such lands belong; *Provided*, that before any of said land, or the proceeds thereof, shall be so devoted to any of the purposes aforesaid, the question whether the same shall be so done shall be submitted at some general or special election to the people of the county.

"SEC. 2. The proper officer or officers of any county may contract with any person or company for the transfer and conveyance of *said swamp or overflowed lands, or the proceeds thereof*, or otherwise appropriate the same to such person or company or to their use, for the purpose of aiding or carrying out any of the objects mentioned in the first section of this act, which said contract shall be reduced to writing and signed by the respective parties or their lawfully authorized agents.

"SEC. 3. Before such contract shall be of any force or validity, the same shall be published for four weeks immediately preceding some general or special election, in some newspaper published in the county, and if there be none published therein, then *three copies* of the same shall be posted in *three of the most conspicuous places in each township* in the county, for the length of time aforesaid, together with a proclamation of the proper officer, and directing how and where the vote thereon shall be taken, and returns made and canvassed, *and in what manner or form the people shall vote thereon;* and if it shall appear that a majority of the people in any county voting thereon are in favor of the contract or proposition submitted to them, then, and in that case, such contract or proposition shall be binding upon the parties thereto; but if a majority of the people voting on such proposition are against the same, then it shall be null and void; *Provided* that no sale, contract, or other disposition of said swamp or overflowed lands shall be valid, unless the person or company to whom the same are sold, contracted, or otherwise disposed of to, shall take the same subject to all the provisions of the act of Congress of September 28, 1850, and shall *expressly release the State of Iowa* and the county in which the lands are situate, from all liability for reclaiming said lands."

This act was a complete summersault in swamp land legis-

lation in Iowa. A direct facing about and backward march upon every former act or movement looking to the reclamation of the land. In unmistakable terms it directly authorizes the alienation of the swamp lands in their unreclaimed condition either in *whole* or in part to aiding *directly* or *remotely* any of the objects named, in proceeds or in kind. By the second section they could be so alienated in bulk to any company or to the *use* of such company or corporation for pecuniary profit in carrying out or in aiding in carrying out any of the objects named. Thus with a *jug of whisky* as in the Wright County case, or a few dollars *bribe* money as in this cause, and withholding the notices of election, causing some paid agent to make misrepresentations of the real facts, or misrepresent the amount or value of the lands in sparsely settled new counties where no paper is published, the entire swamp grant of a county may be devoted to build a single slough bridge or to *aid* in building one. And, as if to clinch the nail to the chicanery here legalized, it is provided at the end of the third section that the "land shark" or "adventurer" who shall purchase the same shall agree in *writing* to take it as it is, and not look to the State or county to drain it for him, but so far as he is concerned relieve the State and county from all obligations to do so. Sell it for whatever is offered, the best nett offer that is made, leaving the purchaser to reclaim it at his leisure or let it go undone. Stand aloof from all obligations to drain the land and "let it slide," is the undisputable voice of this act.

In *McGhee* vs. *Mathis*, 4 Wallace, 143, this court held—

"That the grant by the United States to the State upon conditions, and the acceptance of the grant by the State, constituted a contract. * * * This contract was binding upon the State, and could not be violated by its Legislature without *infringing the Constitution.* * * * The contract required the State to appropriate the lands granted to the purpose of reclaiming them. If the State, therefore, after acceptance of the grant, and without applying the lands or their proceeds to the purposes of reclamation, had sought to compel purchasers to pay for the levees and draining to

reclaim the lands, it certainly would be difficult to say the contract was *not* violated."

The court will observe that the grant of September 28, 1850, is made to the *State*, while the power to dispose of the land is vested in the *Legislature*. The proviso to the second section is clearly a *limitation* on the power of the Legislature to dispose of the land. Mark the phraseology: "subject to the disposal of the Legislature; *Provided, however*, that the proceeds shall be exclusively applied," &c. Now, suppose the proceeds are *not* so applied; suppose the proceeds are applied to build a bridge, or court house, and not to reclaim the lands, does the disposal have any effect? Is it valid? This is a public law, the Legislature, who disposes of the swamp land, and the purchaser both know that the disposal is valid and effective, only when the proceeds are so applied.

"A PROVISO is defined as being a condition that a certain thing shall be done in order that an enactment in another clause shall take effect." (*Bouvier, Tit. proviso.*) Thus in this case the proceeds of the swamp land must be applied to reclaiming the land in order that the disposal shall take effect. And the proviso defeats the operation of the grant *conditionally*.

In *Minis* vs. *United States*, 15 *Peters*, 445, Mr. Justice Story says:

"The office of a proviso is either to except something from the enacting clause, or to qualify or restrain its generality, or exclude some possible grounds of misinterpretation of its extent."

In *Voorhees* vs. *Bank of United States*, 10 *Peters*, middle of page 471, Baldwin, J., says: a proviso in deeds and laws is a *limitation* or *exception* to a grant made or authority conferred, the effect of which is to declare that the *one* shall not operate or the *other* be exercised *unless in the case provided*.

Congress had the undoubted right to dispose of the public land as they should deem best for the public welfare, and to attach such conditions as seemed best; and such conditions are the supreme law. *Constitution, art.* 4, *sections* 3 *and* 6; *Supple-*

mented act for admission of Iowa, sec. 5, *Revision* 968; *2d Story, Com. Con., sections* 1836–1840.

In *Gibson* vs. *Choteau*, 13 Wallace, 92, and in *Turner* vs. *B. M. Union*, 5 McLean, 344, it is held—

"That a State has no power over the public lands in their limits; that the power of Congress in the disposal of the public domain cannot be interfered with, or its *exercise embarrassed* by any State Legislation."

In *Cohens* vs. *Virginia*, 6 *Wheaton*, 414, it is held—

"That the laws of a State repugnant to the Constitution and laws of the United States are *absolutely void.* * * * That for some purposes the States are *sovereign*, and for some purposes *subordinate.*"

In *Smith* vs. *Stevens*, 10 Wallace, 326, where Congress granted certain reservations in fee simple to certain grantees, directed that a certain third party should sell the land in a certain manner, and pay the proceeds to the reservees. A sale was made in a different manner. The court held—

"That the grant having provided the way in which the lands could be sold by necessary implication, prohibited their sale in any other way. The sale in question, not only contravened the policy and spirit of the statute, but violated its positive provisions."

The grantee of the swamp lands is a State with perpetual powers, and a component part of the Federal Government. From the high standing of the contracting powers, Congress had abundent security that the grant would not be diverted as to the State. But the State must act by its agents; and if these agents should be unfaithful, the grant might be diverted and lost. The Legislature stood in the nature of the agent of the State, and as such, were designated to dispose of the lands. But to ensure the faithful application of the proceeds of the lands, the limitation was placed upon the power of disposal, that it could only be effectual upon the application of the proceeds of the land to reclamation.

Private contracts and deeds are often made to be effectual only upon the happening of a future event; or at the lapse of a certain time; lands are often donated on condition that

they are used for certain purposes, or improved in a certain manner. Obligations to pay money or convey land on condition that railroads are built at stated times and places *in futuro*. Conditional decrees of court are often made; judgment sales, marriage settlements and wills furnish us familiar examples. Is it not entirely reasonable that Congress might, and did, secure the faithful application of the proceeds of this land by this *condition subsequent?*

THAT THE TITLE DOES NOT PASS FROM THE STATE NOR VEST UNTIL THE LANDS ARE FITTED FOR CULTIVATION, is the clear meaning and import of this grant. And the act of 22d March, 1858 is void, because it undertakes to pass title in derrogation of the grant.

The grant and its acceptance is a contract. That contract is a *public law;* to violate the contract is to violate the law. To embarrass, to interfere with, or annul that contract, is to interfere with, embarrass or annul the law.

In *Clark* vs. *Washington*, 12 Wheat., 54, Marshall, chief justice, says:

"To operate the lottery is a trust confided to the corporation itself for the purpose of effecting important improvements, and ought, therefore, to be executed under the immediate inspection of the corporation itself. * * * The power thus cautiously granted is deposited with the corporation, * * and is to be executed like other corporate powers. * * * While it remains where Congress placed it, the charter of the corporation affords some security against its abuse. But if the management, control and responsibility may be transferred to any 'adventurer,' who will purchase; all the security for fairness which is furnished by the charter, and responsibility, is lost."

In *Cook* vs. *Burlington*, 30 Iowa, the court says:

"The city took the property for the same purposes which the Government held it, subject to the same trusts; and affected by the same conditions. It acquired the right to dispose of it for public uses, because it was reserved to such uses by the Government. But as the city could not, without a breach of trust, devote this reservation to private uses, it cannot convey it to others to be devoted to private purposes."

If the Legislature of Iowa may divert this swamp land grant, or annul its conditions, it may do the same thing with every other grant, and so may all the other States. Then what becomes of all the school, university, college, railroad, and improvement grants of the country. The only security the Government has is to demand absolute good faith and honest execution in these grants.

When lands are granted to a railroad to be applied exclusively for that purpose it is held by numerous cases that no title passes until the road is *completed in fact.* Now, if the vesting of title in such cases depends upon the act of building a railroad track, why not in the swamp land by fitting the land for cultivation *in fact?*

Appellant's claims are all acquired by virtue of the second section of this void act. Void for repugnancy; for breach of trust; for moral dishonesty in equity; for embarrassing the act of Congress and violating its express provisions. They have no standing in court.

Assignment of the Unadjusted Claim for Cash.

This claim for cash indemnity, under the name of "fund and claim of the county on the General Government," was lumped into the contract with the land; was sold and transferred by the said agreement, fully and completely. No other writing or assignment has been at any time made, and appellant acknowledges the receipt of the cash. Both the contract and deed obligate the county to make an assignment if needed; but none was necessary.

For this large sum of money and land *nothing at all was paid*, or agreed to be paid.

Smurr, a member of the board of supervisors, testifies: "Not any of the two thousand dollars was to be paid for the indemnity fund and claim." (Record, p. 154, inter. 9.)

Barnett, a member of the board of supervisors, testifies: "In arranging the written agreement the fund and claim was put down with the lands. McKay said the company would not pay anything for the claims, as they were doubtful.

They wished to have them with the land. I asked him to take the land at $2,000 and leave the claim out. He said, No, no, he wanted the claim along, and we would be clear of all trouble." (Record, p. 177, inter. 17–22.)

IN THE ANSWER appellant avers as follows:

That this defendant *purchased* the claim of said county against the Government of the United States for indemnity money and scrip, and also purchased land in place, of said county, assuming all risks of failure to establish said claim or any portion thereof. That defendant also *undertook to prosecute said claim at its own expense;* and to defray all expenses which plaintiff had then incurred, &c. (Record, bottom page 52.)

Here it is admitted that appellant purchased this unadjusted claim, and was to prosecute it at his own expense; an act which is a fraud upon the public Treasury of the United States, positively prohibited by statute, viz:

An act to prevent Frauds upon the Treasury of the United States:

"*Be it enacted, &c.*, That all transfers and assignments hereafter made of *any claim* upon the United States, or any part, or share thereof, or interest therein, whether absolute or conditional, whatever may be the consideration therefore, and all powers of attorney, orders, or other authorities, for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, *after the allowance of such claim, the ascertainment of the amount due*, and the issuing of the warrant for the payment thereof."

Sec. 10, Statutes at Large, chap. 81, p. 170.

The claim of appellee had *not* been allowed; nor the amount ascertained to be due, nor the warrant issued. The claim was represented as *worthless*. Appellant, by false representations, procured the assignments, and corruptly agreed with the board of supervisors to "*prosecute it at their own expense.*" The supervisors had no authority to make such assignment. It was a fraud upon the Treasury. Their act did not bind the appellee. And in equity the appellant should account for the money received.

II. The Agreement is Prohibited by Statute and is Void.

Section 959 of the revision of 1860, of the laws of Iowa, reads thus:

"*No swamp or overflowed lands shall hereafter be sold at less than one dollar and twenty-five cents per acre.*"

It is section 4 of chapter 110, acts of the General Assembly of 1855. It has been in full force from that date, and is now the law of Iowa. *It* is a just and reasonable prohibition upon sales for insufficient or nominal consideration, the effect of which would be to squander the land and not effect its reclamation. As Government land that was its price, and indemnity was granted at that rate.

This agreement is a sale of the land, funds, and claims of the county. The first section of the agreement contains these words: "and agree to *sell*, *release*, and *convey*." (Record, p. 43.)

The deed contains these words: "*Resolved* that this board does now grant, *sell*, and convey." Also this: "It is a condition of this conveyance that in case any lands are included in the foregoing description which are not *contracted to be sold* to said company by said written agreement, &c., then they are reserved, &c. (Record, pp. 46 and 47.)

In McKay's letter requesting the deed he says: "The company has already entered with great earnestness upon its system for procuring emigrants and settlers to occupy the lands *purchased* of your and other counties." * * * "You will find in the deed ample reservations so that no land not *sold* to us can possibly be conveyed by this deed." (Record, p. 91.)

In the record of the board of supervisors of McKay's proposition it is thus expressed: "Now comes F. C. D. McKay, agent, &c., * * * and makes a proposition to *purchase* the swamp land interest of Adams County for the sum of two thousand dollars."

Barnett testifies that the words "for the *sale* of swamp lands," was put on all the Democratic tickets in the county. That little printed billets were furnished by McKay, and that Bixby was to do the same to the Republican tickets. (Record, p. 175.)

Twelve witnesses testify, from the several townships of the county, that the proposition voted on was to *sell* two thousand acres of land for $2,000. The contract in fact covers the entire selected list, less the lands previously disposed of, being twelve thousand acres, or at the rate of 16⅔ cents per acre, in direct violation of the above prohibition. That such a sale is void, see the following cases:

Wheeler *vs.* Russell, 17 Mass., 258.
Harris *vs.* Runnels, 12 Howard, 79.
Root *vs.* Goddard, 3 McLean, 102.
Hayden *vs.* Davis, 3 McLean, 276.
Root *vs.* Wallace, 4 McLean, 8.
Dill *vs.* Ellicott, Taney's C. C. Dec., 233.
The Pioneer, 1 Deady C. C. Cal., 72–79.
Davidson *vs.* Lanier, 4 Wallace, 255.
Armstrong *vs.* Tolen, 11 Wheaton, 258.
Bartel *vs.* Nutt, 4 Peters, 184.
Siter *vs.* Sheets, 7 Indiana, 132.
Nichols *vs.* Poulson, 6 Ohio, 134.
Insurance Co. *vs.* Forsyth, 2 Carter, Ind., 483.
Reynolds *vs.* Nichols, 12 Iowa, 403.

But appellants will claim that the Supreme Court of Iowa have decided that when the agreement has been submitted to the vote of the people, the sale may be for a less price than $1.25 per acre. And such, it is true, is the ruling in the case of *Audubon County* vs. *Appellants*, 40th Iowa, 460. But certainly this court will not be governed by such a decision. The sweeping negative declaration of the statute is "*no sale of swamp lands shall hereafter be made*," &c. Now, if it is a sale, it is prohibited at less than $1.25 per acre, no matter who makes it or how made. In this case the agreement was made by the supervisors, and if illegal in its terms, the voters could not legalize it. The voters did not act upon the terms of the agreement, but only upon the whole agreement. That one of its parts was illegal, making the agreement void, could not be effected by a vote. Besides, the Supreme Court of Iowa placed the

decision on the ground that the act of 22d of March, 1858, was *valid*, and holding that said act was independent—another mode of disposing of the land; an act independent of the act of 1855. (See the opinion.) We claim the act of 1858 is, itself, invalid, as being repugnant to the swamp land grants, as before shown, and, therefore, the prohibitory act of 1855 is not affected by it. The question of the invalidity of the act of 1858 has not been presented to the Supreme Court of Iowa at any time.

Further, if upon a review of the whole case, this court is satisfied that the decision in the Audubon County case was incorrect, this court will not be bound by that erroneous case, so far as it relates to this trust reposed by Congress, upon this Federal question.

See *Butz* vs. *Muscatine*, 8 Wall., 575.

The question of the repugnancy of the act of 22d March, 1858, has *not* in any cause, or at any time or place, been made, or decided by the Supreme Court of Iowa. Nor the question that said act was a breach of trust, or a violation of the swamp land grant, has not been made in that court. The contract passed upon in the Audubon County case appears to have been a "*dedication*" of the lands in kind and not a "*sale*," as in this case. That court held that the act of 1858, (being revision, s. 988, 989,) as applied to the contract in that case, did not conflict with section 959 of the revision above quoted. Now, it is clear, if sections 988–89 are *void* for repugnancy, then there is no other law, except section 959, and under that this sale is illegal, because for a less price than $1.25 per acre. In this case, by the very terms of the agreement, it is a "sale," and, whether voted upon or not, it is prohibited.

The wrongful making of the agreement by the board of supervisors, in a manner, or for a prohibited consideration, would not be legalized or incidentally ratified by the vote.

See Mayor *vs.* Reynolds, 20 Maryland, 14.
Webster Co. *vs.* Taylor, 19 Iowa, 120–123.
Smead *vs.* R. R. Co., 11 Ind., 109.
Cuyler *vs.* Rochester, 12 Wend., 165.
Dillon Mun. Corp., sections 373, 447, n. 3.

III. Fraudulent Representations in Securing the Contract, and Inadequacy of Price.

The following is the evidence of appellees found in the record. The appellant having *no* rebutting proof whatever, nor have they endeavored to contradict this evidence:

The Evidence of False Representation as to Proof.

Larimer testifies—Queen City Tp.—Record p. 145, inter. 3 and 4: (*a.*) I heard representation, before and at the election, that the swamp land and *money in lieu of land* that had been entered *would be a total loss* to the county, that the action the county had taken in selecting and *proving up was illegal and worthless.* It was also represented that the American Emigrant Company would put settlers on the land, and the taxable property of the county be increased. These representations were made by John Bixby, clerk board of supervisors, and H. A. Smurr a member of the board. Smurr was quite active on the day of sale, urging the people to vote for said sale. The voters advocated at election that they believed the swamp land was a total loss to the county together with the money.

Holbrook—Quincy Tp., testifies—Record, p. 147, inter. 4: (*b.*) I saw McKay the time the contract was made. They told me he was buying the swamp lands. I said that $2,000 was a small sum for swamp land. They told me it *was uncertain* about getting the lands. The day of election a good deal was said; people seemed to think we had better take $2,000, as it *was uncertain* whether we would get anything. I heard Bixby urge the sale, and assign the above reasons for voting for the sale. The voters did not seem to think they were voting anything on the contract except the land; they appeared to think they would *never get any money;* received the impression from McKay, also from John Bixby.

Case—Union Tp.—testifies, Record, p. 148, inter. 4, 5, 6, and 7: At the election the representation was made that the two thousand acres was all we could ever get. As to the indemnity, *that was a settled arrangement, that we would never get anything;* these representations were made before and at the election. Bixby took a very active part to get the people to ratify the contract.

H. A. Smurr, member board, testifies, Record p. 154, inter. 4: (*c.*) I was present September 3d, 1862; McKay came forward and made a speech in reference to the operation of the American Emigrant Company in other counties; he represented that they had made several settlements in different parts of this and other States. He proposed to give one dollar an acre for the swamp land the county held, and send in a certain number of settlers, and locate them on said lands, and he then set up the amount of improvements to be made on said lands, which was to be put under cultivation—five acres of timber and five acres of orchard on each forty, and to drain the same. Representations were made in regard to the advantages the county would derive from said sale. He spoke in reference *to the back money*, and conveyed the idea that it *was never likely to become at or recovered* by the county.

Schooling—member board, Washinton Tp.—testifies, Record, p. 158, inter. 4, 5, 6, 7, 10–18. (*d.*) I was present when contract was made. The idea was held forth in his (McKay's) discourse that we would not get but two thousand acres, that the rest of the claims were uncertain. We thought the county had at that time about two thousand acres. On page 159 witness says: He (McKay) *spoke slightingly of our getting the swamp land claims, or their value.* He held forth the idea it *was doubtful if we ever got anything from the Government.* The price agreed upon was one dollar per acre. I don't recollect of anything else sold to the Emigrant Company in that contract besides the two thousand acres of land as talked over prior to the time the contract was reduced to writing. There was some talk about our having some claim. Davis had got up some proofs that I had no knowledge of at that time, this was the last selection. We had no knowledge of the last selection being approved or accepted. My view of the contract was that we were selling him the two thousand acres of land for $2,000; *nothing* for claims. I had no knowledge whether the two thousand acres of land was yet in the Government—whether there was any patents for it or not. I don't know that any part of the money to be paid was for indemnity claims.

I have no recollection of seeing a copy of the contract posted up prior to the day of election. I was asked by several men the day the contract was voted on, "the terms," and made a statement to them of my views of the contract, that we were selling them two thousand acres at one dollar

per acre, and I also told them the land was to be settled, drained, and five acres on every forty acres to be planted in timber, and five acres on every forty in some kind of fruit trees. This I supposed to be the sum and substance of the contract. McKay proposed to the board to settle the land, a certain portion in three years, to be sold in small tracts, not exceeding one hundred and sixty acres, and planted in timber as before stated. Something was said about putting sheep on it, I don't recollect about that; the land was to be settled by men who would make good citizens, and I aimed to represent to the people the same that McKay had represented to the board, so far as I represented anything. There are no emigrants sent into the county by them that I know of. Bixby commenced to act as agent for the company soon after the contract was made; he spoke favorable to sale of land; at time the contract was made McKay held forth the idea that it was doubtful about the county getting anything; he did not state his source of information; he talked *as if he had knowledge* of it, but I don't know that he gave his source of knowledge.

John W. Morris, of Jasper Township—testifies, record, p. 165, inter. 3–16, cross 18. (*c.*) I was present with the board when McKay made his proposition to the board at September meeting, 1862. McKay proposed to take the swamp land at one dollar per acre, and settle it and drain it, to furnish so many settlers. The land was that in the even sections, the amount was supposed to be about two thousand acres. He said the company would take the land and settle it and drain it at one dollar per acre. He spoke of taking other counties in the same way. He was to plant certain portions in timber. The next day I had a talk with McKay in Brookville, he was going to Bedford, there were three or four present, the swamp land was spoken of, he (McKay) asked what we thought of the proposition. Mr. Harlow, a member of the board, was there; he said the proposition was fair, that he expected it to be performed and the land settled; the *indemnity proof* and land in *the odd sections* was spoken of, and McKay held forth the idea that the county would *never realize anything from them in the situation* they were in. McKay said we would *never realize anything on them affidavits*, that they would never amount to anything.

On the day of election, the day the contract was submitted, Harlow, the member of the board from our town-

ship, spoke of the matter and the proposition about as McKay had. There was some objection by the electors. Harlow admitted the price was low, but with the advantage of settling, improving, and draining the land, without further expense to the county, that we would soon get back in taxation enough to make up for the low price. These representations were made to six or eight of us in a crowd on election morning. Harlow was there most of the day at the polls. I saw no copy of the contract posted, or at the election. I did not know of any. Don't know what the people relied on as to what the contract was. Harlow spoke of the contract and represented to the people that the company proposed to take the land that was in even sections, amounting to about two thousand acres. There was only one vote against the contract in our township. I do not know of any emigrants sent here by the company. At the time of making the proposition to the board, McKay held a paper in his hand, of some two or three pages legal cap, and spoke about his proposition in other counties. He had made a like contract or agreement in other counties.

Bixler—a voter in Douglas Township—says, Record, p. 174, inter. 3–8: (*f.*) It was said the county had acted on the matter to sell the swamp land, and it was said it would be better to sell the land; *that what the land was sold for was all we would ever get any how.* At the election it was represented to us that we had better sell the land than keep it. These representations were made before the election, by John Bixby; and at the election it was the general talk. We were going to sell the land to the Emigrant Company. The reason given was that it would be better for the county to sell the land and have it improved. We supposed we were selling about two thousand acres of land at one dollar per acre, if I recollect right. The Emigrant Company were to send settlers on the land, and improve and have the land ditched. I don't recollect whether I saw any copy of the contract posted at the place of election or not. There were three or four hundred acres of the two thousand acres in Douglas Township. Not any of it has been settled, improved, or ditched, that I know of. I don't know of any settlers in the county sent here by the company.

Barnett—chairman, board of supervisors, Douglas Tp.—testifies, Record. pp. 176–178: (*g.*) I used my influence to have the contract adopted. McKay requested me to use my influence for the adoption of the proposition. It was put

upon all the Democratic tickets used in the county: "For the sale of swamp lands." I wrote this upon the Democratic tickets by request of McKay. McKay said if I would do so he would compensate me for so doing; he left "little billets" to be pasted on the tickets, on which was printed "For the sale of swamp lands." These billets had mucilage on the blank side to make them stick on the tickets. I was busy as clerk of election, and have no recollection of doing or saying much. I have no positive recollection of any copy of the contract or proclamation being posted in the township. I don't know what way the people had of finding out what the contract contained at that election. I know of no way but by common talk. I received from the Treasurer of the Emigrant Company *three dollars* for writing "For the sale of swamp land" on the tickets. On the day of election the voters asked me what the contract was. I told them the contract with the company was that the company was to pay $2,000 for the swamp land, and settle the same with emigrants; that the amount of land we proposed to sell was about two thousand acres; that was the calculation made be the board and McKay to be about what the county owned. I was chairman of the board of supervisors. The words, fund and claim on General Government, was included in the contract to include the funds that was known as the indemnity money or funds that *it was thought to be doubtful* to obtain. We thought the indemnity *fund and claim doubtful* at the time the contract was made, *because we were told so by Mr. McKay*, and we had *no other means* of information at that time, to my knowledge. In arranging the terms of the contract, Mr. McKay said the company would not pay anything for the claims, as they were doubtful; they wished to have them with the land. He represented to the board that the *claims were doubtful*, and might cost as much as they were worth to get them, if they were got at all. At the day of election I did not say anything to the people about the funds and claims being included in the contract; I felt it made no difference. At time contract was made I asked McKay to take lands for $2,000, and leave the claims out. He said *no! no!* He wanted the claims along, and we would be clear of the whole trouble, or something to that effect. I was chairman of the board, and McKay was making a speech. McKay told me John Bixby was going to attend to the Republican tickets, and he wanted me to attend to the Democratic tickets. Either John Bixby or McKay told me

that Mr. Bixby received *ten dollars* for his services, and making a speech at Queen City in favor of the swamp land proposition.

Isaac Crow, Jasper, says, Record p. 195: (*h.*) Hiram Harlow, member board of supervisors, represented to the people at the election, that it was best to sell the swamp land to the Emigrant Company; that there were about two thousand acres of the land, and that they would settle the lands up in a short time, and that it would be better for the county. I think his representations induced the people to vote for the contract more than they would. *He also represented that there was a lot of pay back, but that the county would never get that.* He represented that he got his information from McKay.

J. F. Powell, sheriff, testifies, Record, p. 197: (*i.*) It was represented to the people of Adams County, that all claims upon the General Government was *exceedingly doubtful* for any other swamp land than they had already got, or *any swamp land indemnity money.* There were representations made to the board of supervisors by McKay, by Bixby to to the people, and by J. F. Powell. It was represented to the board by McKay that the *proofs* which Mr. Davis took, *that we had relied on, had failed to accomplish the object* for which they were intended. Mr. Bixby represented to the people that he thought it *very uncertain* that we should *ever obtain* any swamp land or indemnity money; that we would *never get any more than we had got.* I represented the same to the people, as I was interrogated frequently by the people of the county. McKay represented to the board, in my hearing, that the company intended to reclaim the land, and put actual settlers upon the land. He represented that they had an agency in Europe so as to secure settlers to be sent here, and that they would make valuable improvements on the land, and that the increased taxes, by reason of the improvements, would be worth to the county more than to retain the land. He represented that he intended to have each settler plant a grove, and he enlarged upon the utility of having the farmers of the county plant groves.

The Evidence of False Representations as to Settlements.

Larimer testifies, Record, p. 145: (*a.*) It was, also, *represented that the American Emigrant Company would put settlers*

on the lands, and by so doing the taxable property of the county would be increased, and the county released from draining said land. These representations were made by John Bixby, clerk of the district court, and clerk of the board of supervisors, and by Mr. Smurr, one of the members of the board of supervisors. Mr. Smurr was quite active on the day of election in urging the people to vote for the sale.

Holbrook testifies, Record, p. 148, inter. 8: (*b.*) Representations were made by McKay, that whatever land was obtained by the American Emigrant Company, *were to be settled and improved.*

Case testifies, Record, p. 148: (*c.*) The representations were made at the election and prior thereto, that the American Emigrant Company *was to settle the land with white settlers*, one-third in three years, one-third in five years, and one-third in eight years.

Smurr testifies, Record, p. 154: (*d.*) I was present the 3d of September, 1862; I was a member of the board of supervisors. Mr. McKay came forward and made a speech in reference to the operation of the American Emigrant Company in other counties and States. He represented that *they had made several settlements* in different parts of this and other States. He proposed to give one dollar per acre for the swamp land the county held, *and send in a certain number of settlers and locate them on said lands* He then set forth the amount of improvements to be made on said *lands which were to be put into cultivation* Five acres of timber to be cultivated on each forty acres, and five acres of orchard on each forty acres, and to drain the land, or if they *did not drain the said land*, the county had a right to drain, and the *American Emigrant Company pay the expense* of draining; likewise the board to have control or regulate the sale of said lands so far as necessary to protect the interests of the county. Interrogatory 16, p. 156: McKay stated they had their emigrant agent in New York City for the purpose of sending emigrants into the West, and locating them on their lands, and they would agree to sell this land at $1.25 per acre to emigrants. I cannot say what *nationality of emigration he was to send*, but they were to be men who would make good, respectable citizens.

Schooling—testifies, Record, p. 160, inter. 18–20: (*e.*) On the day of election, I was asked by several men the terms of sale, and made a statement to them of my view of the contract, that we were selling the Emigrant Company two thousand acres at one dollar per acre. *I also told them the*

land was to be settled, drained, and five acres out of every forty to be planted in timber, and five acres out of every forty to be planted in some kind of fruit trees. Interrogatory 20, page 160: *McKay had proposed to settle the land*, a certain portion in three years, to be sold in small tracts. Something was said about putting sheep on it. *It was to be settled* by men who would make good citizens. Interrogatory 21: I aimed to represent to the people the same that McKay did to the board, as far as I represented anything. Cross-interrogatory, page 165: McKay said in his speech that he would have the timber and fruit trees planted as stated before. I did not understand that this was in the contract, but statements were made at the request of the citizens on the said previous to the contract. Interrogatory 21: These statements were made at the request of the citizens on the day of election that they might know the nature of the contract.

Morris—testifies, Record, 166: (*f.*) I was present with the board of supervisors when McKay was present and made the proposition to the board of supervisors, at the September meeting, 1862. He proposed to take the swamp land at one dollar an acre *and settle it and drain it and furnish so many settlers, the number I cannot recollect.* The land we were talking about was that in the even sections. The amount spoken of previously by the board, after the pre-emption were deducted was supposed to be about two thousand acres. He was to plant certain portions in timber. Interrogatory 10, page 166: On the day of election Mr. H. L. Harlow, member of the board from our township spoke of the proposition about as McKay had, Harlow admitted the land was low priced, but with the advantage of settling, improving and draining the lands without farther expense to the county, that we would soon get back in taxation enough to make up in the low price of the lands.

Bixler—testifies, Record, 175, inter. 4: (*g.*) The reason given for voting for the contract on the day of election was the Emigrant Company were to *send settlers on it and have the land improved and ditched.*

Barnett—testifies, Record, page 176, inter. 11: (*h.*) McKay requested me to use my influence for the adoption of the proposition. On the day of election I told the voters the contract was: The company was to pay two thousand dollars for the *swamp land, and settle the same with emigrants*, and that would be more advantageous to the county than to keep it in an unsettled state.

White—testifies, Record, 194, inter. 2: (*i.*) The reason the people gave for voting for the contract was that they *would have the land settled up in five years* and taxation would come from it to the county sooner than it would otherwise.

Crow—testifies, Record, 195, inter. 4: (*k.*) Hiram Harlow told the people the day of the election that the Emigrant Company *would settle the lands up in a short time;* that it would be better for the county. I think his representations induced the people to vote for it more than they would have done. Interrogatory 14, p. 196: I know that McKay stated to the board that the lands should all be settled up.

Powell—testifies, Record, 198, inter. 19: (*l.*) Mr. McKay represented to the board of supervisors in my hearing, that *the company intended to reclaim the land and put actual settlers upon it.* He represented that they had an agency in Europe so as *to secure settlers to be sent in here* and that they would make valuable improvements upon the land, and that the increased taxes by reason of the improvements, would be worth more to the county than to retain the land. He represented that he intended to have *each settler to plant a grove*, and he enlarged upon the utility of having the farmers of the county plant groves.

[CIRCULAR.]

NEW YORK, *July* 24, 1862.

Record, p. 115: "The conditions upon which these lands are sold, * * * are as follows: Each purchaser shall contract to settle upon the tract purchased within one year from the date of purchase, shall cultivate yearly an amount proportioned to the number of acres, for one hundred and sixty acres, five acres in crops, five acres in timber, five acres for fruit, the company furnishing the necessary seed, also timber seed gratis, and fruit settings at half nursery prices. * * * Whenever settlers shall provide the necessary means for the proper care of sheep, the company to furnish each such a number as may be desired on most advantageous terms, &c. The company forwards settlers at reduced rates of fare. * * * In no instance will contracts be made with settlers not having means to perform their contracts. * * * Address all letters to F. C. D. McKay, Des Moines, who is fully authorized, under positive instructions, to contract with counties for transfer of their swamp land claims, establish local agencies, &c.

"S. P. LYMAN,

"*Sec'y and Ch. Executive Board, A. E. Co.*"

Evidence of False Representations as to Property Sold by Contract.

Case—testifies, Record, p. 148, inter. 4: (*a.*) The representations were that the *two thousand acres* was all we would ever get at any rate.

Schooling—testifies, Record, p. 158, inter. 4, 5: (*b.*) The idea was held forth in his discourse to the board, that we would not get *but two thousand acres*, that the rest of the claim was uncertain. We supposed at the time that we had two thousand acres or a little more. Interrogatory 11, page 159: There was none of the two thousand in consideration of the assignment of the claims on the United States. My view was that we were sellings him the *two thousand acres* of land for $2,000. It was swamp land, first selection; I had no knowledge whether we had any patents for it or not.

Morris—testifies, Record, p. 166, inter. 3: (*c.*) The proposition of McKay was that the company would take the land at one dollar per acre and drain it. Interrogatory 14, page 167. Harlow represented to the people the day of the election that the Emigrant Company proposed to take the land that was in even sections, which was not pre-empted, amounting to *about two thousand acres.* There was no objection made the day of election to the Emigrant Company getting the indemnity money; I heard nothing said about that the day of the election.

Bixler—testifies, Record, p. 174, inter. 3: (*d.*) The day of the election we supposed we were selling about *two thousand acres* of land at one dollar an acre.

Barnett—testifies, Record, p. 176, inter. 12–14: (*e.*) I told the people the day of election that the number of acres of land that was proposed to sell to the Emigrant Company was about *two thousand acres.*

Paying Money to Election Officers.

Barnett—testifies, Record, pp. 176 and 7: (*a.*) I recollect it was put upon all the Democratic tickets that was used in the county, "For the sale of swamp land." I wrote this upon the Democratic tickets by the request of Mr. McKay. Mr. McKay said if I would do so, he would compensate me for so doing. He left little billets to be pasted on the tickets, on which was printed, "For the sale of swamp land,"

these billets had mucilage on the blank side to make them stick on the tickets.

Int. 7. I received *three dollars* from the treasurer of the Emigrant Company for my services, writing the proposition on the tickets.

Int. 23. McKay told me John Bixby was going to attend to the Republican tickets, and he wanted I should attend to the Democratic tickets with reference to writing the words on the ticket. Either John Bixby or McKay told me that Bixby *received ten dollars* from the Emigrant Company for his services, and making a speech in Queen City in favor of the swamp land proposition.

Bixby—testifies, Record, p. 181, inter. 5: (*b.*) By a vote of the board of supervisors I was required to post notices, required by law, on the election of the contract, which duties required extra labor, for which extra labor F. C. D. McKay *paid me*, to the best of my recollection, *fifteen dollars*.

Want of Knowledge of the Board and People.

Case—testifies, Record, p. 148, inter. 10: (*a.*) All the board of supervisors knew in regard to the indemnity money and land claimed from the United States, was that the county owned a claim against the United States for indemnity money and land on account of swamp land entered after the swamp land grant, and prior to the selection of the swamp land, and that proofs had been forwarded in the form of affidavits, *but the board did not know anything about the condition of the claim as to whether it was valid or not*, or whether the authorities at Washington would recognize it or not.

Smurr—testifies, Record, p. 153, inter. 11: (*b.*) Previous to the time of the contract the supposition of the board was that the indemnity money and scrip would be recovered, and up to the time this circular was seen by the board, this circular conveyed the idea that *we would have to go through the routine of proving up again.* This circular purported to come from the land office, and was given us by John Bixby, who said it was sent by Mr. McKay; that was one reason why I went for disposing of the lands.

Schooling—testifies, Record, p. 158, inter. 8: (*c.*) At the time of the contract there was some talk about our having some claim on the United States Government. *Davis had got up some proofs I had no knowledge of at that time.* This was under the second selection. We supposed we had

claims coming from the Government; *we had no knowledge of the last selection being accepted or approved.* We had some swamp land; I had *no knowledge whether there were any patents for it or not.*

Barnett—testifies, Record, p. 175, inter. 16: (*d.*) At the time the contract was made we thought the indemnity fund and claim was doubtful; we were told so by Mr. McKay, *and we had no other means of information at that time, to my knowledge.*

ELECTION PROCLAMATION AND CONTRACT COPY.

Larimer—testifies, inters. 6 and 7: I neither saw nor heard of any proclamation or copy of contract posed at the place of election or any other place in the township. I think I should have seen it if there had been any posted. I was looking for such papers, and thought they should have been posted. I live about twenty rods from the post office, the most public place in the township, and was there every day, and am very sure there were no such papers posted up. I also lived about forty rods from the school house, where the election was held, and was there at the election and heard or saw nothing of such papers, and heard no one speak of any being posted.

Holbrook—testifies, inter. 5: (*b.*) I never saw any proclamation or copy of contract, or heard anything about anything of the kind being posted at the election, and the entire election was conducted on hearsay as to what the contract contained.

Schooling—testifies, inter. 17: (*c.*) I did not see any copy of the contract posted up in Washington Township prior to the election.

Morris—testifies, inter. 11: (*d.*) I did not see any copy of the contract or proclamation posted in Jasper Township at the election or any other time.

Barnett—testifies, inters. 5 and 6: (*e.*) I don't know what way the people had of finding out what the contract contained at that election. I know of no other way than by common talk. I don't recollect whether the contract was posted or not.

Bixby—testifies, inter. 21: (*f.*) I don't remember how many notices of the election on the swamp land contract were posted. (Inters. 9, 10, and 11, p. 118.) Copies of the contract and notices were posted as required by law, as I

understood it, and under direction of F. C. D. McKay. I don't know that I examined the law, or was guided by the direction of the statute. I was guided by and directed and trusted to Mr. McKay.

White—testifies, inters. 3, 4, 5, and 6: (*g.*) I live a quarter of a mile from where the election was held in Nodaway Township. I was at the election. I think if there had been a copy of the contract posted there I would have seen it. I did not hear anyone say they had seen a copy of it posted.

Crow—testifies, inter. 18: (*h.*) I was at the election in Jasper Township all day. I never saw a copy of the proclamation or contract either there, or in the township, or in the county, either then or at any other time. I never heard anybody say that they had ever seen a copy of the contract, that I recollect of.

Powell—testifies, inter. 4: (*i.*) I received an order from the clerk of the district court to post notices of the general election of 1862. I posted notices according to law. I have no recollection of receiving a single copy of the swamp land contract to post that year. I lived eight rods from the court house; being sheriff, was there very often; sometimes three or four times a day. I have no recollection now of seeing any copy of the swamp land contract posted, as is customary to post papers for public inspection. I saw a copy of the contract in Bixby's, the clerk's, office. There was no paper published in Adams County, and I never heard anybody say they ever saw a copy prior to the election.

REPRESENTATIONS RELIED UPON BY THE BOARD AND PEOPLE.

Larimer—testifies, inter. 4: (*a.*) The voters at the election advocated *that they believed* the swamp land was a total loss to the county together with the money, and that $2,000 from the Emigrant Company would be better than nothing.

Holbrook—testifies, inter. 9: (*b.*) I was at the election nearly all day. The people, from their conversation, *relied upon the statements of McKay*, and voted for the contract upon his representations. There were forty-three votes for the contract and two against it in my township.

Case—testifies, inters. 5, 7, and 8: (*c.*) At the day of election, *the people relied upon the representations as to the loss of the indemnity*, money, and value of the lands as above represented. I heard John Bixby make representations as to the settlement of the lands. I undertood Bixby to make

them upon the authority of McKay. He took a very active part in getting the people to ratify the contract with the Emigrant Company. There were ten votes cast for the contract, and none against it in my township.

Smurr—testifies, inter. 13: (*d.*) I should say the *board relied upon* the representations made by the circular sent by McKay, as shown us by Bixby. I gather this from the discussion of the board.

Schooling—testifies, int. 21 and 23: (*e.*) *I represented* to *the* people at election *the same things McKay had represented to the board.* I believe a large majority of the votes were in favor of selling.

Morris—testifies, int. 5: There were three or four of us together when McKay stopped. This matter of selling the swamp land was spoken of. McKay asked us what we thought of the proposition. Harlow, one of the board, was present. He replied that their proposition was perfectly fair, and he expected it to be performed, and the land settled. I don't know what the people relied on as to what the provisions of the contract were. For myself, *I had heard the proposition, and Mr. Harlow represented the contract to me.*

Barnett—testifies, int. 20: (*g.*) *The general talk* of the board at the time the contract was made, *was to let the Emigrant Company have the land* and the claims for $2,000. This was the final decision. They talked among themselves, and I could not tell what they said. There were no speeches made except what McKay made.

Crow—testifies, int. 6 and 7: (*h.*) At the day of election, Harlow represented that he got his information that the county *would never get any back money from the agent of the company, McKay. I don't think the people had any information, only just what they got from Harlow.* I think the people voted for the contract at that election on Harlow's representation. I voted for the contract.

Powell—testifies, int. 14: (*i.*) I was sheriff of the county. I had an expression from persons in all parts of the county, and was interrogated by them in reference to the sale of the swamp lands of Adams County. The general impression was that it was the best thing we could do, was to sell as represented to them by the supervisors of the different townships. The principal means the *people had of knowing what* was in the contract, was *through the supervisors of the different townships.*

EVIDENCE OF FALSITY OF REPRESENTATION.

H. L. Skinner—appellant's witness—testifies, answer 2. (*a.*) I had charge of the swamp land division of general land office. I was the principal clerk in charge of the work arising under the swamp land grant September 28th, 1850.

Cross-inter. 13, Record, p. 214. Did the department require lands in place which had been selected and reported by the surveyor general prior to March 3d, 1857 to be established as swamp, by additional proof (aside from the surveyor general's certificate) before they were certified to the State.

Answer. The department *did not require any additional* proof.

GENERAL LAND OFFICE, *November 1st*, 1861.

(*b.*) REGISTER, DES MOINES, IOWA, *Sir:* I am in receipt of your letter of 26th ult., with proof to obtain indemnity on alleged swamp lands in Adams County, Iowa.

Very respectfully, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

GENERAL LAND OFFICE, *April 15th*, 1862.

(*c.*) FRANK M. DAVIS, QUINCY, IOWA, *Sir:* I am in receipt of your letter of the 3d inst. referring to the proof heretofore forwarded to this office, for indemnity under act of 2d March, 1855, for swamp land in Adams County, Iowa. * * * *The indemnity proof appears to be made in accordance with the requirements of this office*, and the account for cash and the issue of the special certificate will be stated and adjusted *as soon as they shall be reached in the regular order* of business, and the State found to be entitled thereto. * * (Vide Record, p. 136.)

J. M. EDMUNDS, *Commissioner,*
Department of the Interior.

GENERAL LAND OFFICE, *February 10th*, 1872.

I, Willis Drummond, Commissioner of the General Land Office, do hereby certify that * * * the annexed paper marked "G" is a true *copy of one of the affidavits filed by the State of Iowa*, claiming indemnity for the tract of land therein described, sworn to before Frank M. Davis, notary public, *which affidavits were the basis on which indemnity was granted for*

the tract of land therein described. (*Vide* Record, pp. 120, 121, and 130, 131.)

(*e.*) See also patents for lands in place, since patented to the county. (Record, p. 206.)

(*f.*) See, also, patents for indemnity lands since deeded to the county. Also, receipts for each indemnity since allowed and paid on proofs then filed, being for the three drafts, as stated in receipts. (Record, p. 138.)

(*g.*) See, also, printed circular of J. M. Edmunds, Commissioner of General Land Office, May 31, 1862, as follows:

"To His Excellency, the Governor of Iowa, *Sir:* Certain proofs sent by the authorities of Iowa in the matter of a claim for swamp indemnity * * * having recently undergone the revision of the Secretary of Interior. * * * The Secretary has rendered a decision in which, *whilst it does not disturb any case in which proof has heretofore been filed in accordance with requirements*, lays down in respect to all proof *hereafter to be taken* in support of such claim the following principles. (Record, p. 116.)

Evidence of Price of Claims.

Smurr—testifies, Record, p. 154, inter. 9: (*a.*) *Not any* of the $2,000 was to be paid on the indemnity scrip claim and funds on the United States.

Barnett—testifies, inter. 18, Record, p. 177, inter. 9: (*b.*) At the time the contract was made McKay said the company would *not give anything* for the claims.

Schooling—testifies, inter. 11: (*c.*) State how much of the $2,000 McKay agreed to pay to the county in the contract was in consideration of the assignments of claims for money and indemnity lands on the United States.

Answer. My view was that we were selling him the *two thousand acres of land for* $2,000.

Inter. 14. What was the consideration paid, or agreed to be paid, for the indemnity money and lands claimed to be due from the United States which the board called uncertain?

Ans. *I don't know that there was any part of the money.*

Inter. 15. Was the two thousand acres the board claimed to own at that time the real subject matter sold or not?

Ans. I considered that we were selling that, and that was the view that was held out when we were taking a vote on it.

FRAUD AS TO MORTGAGE.

DES MOINES, *September* 1, 1863,

TO THE HONORABLE BOARD OF SUPERVISORS OF THE COUNTY OF ADAMS:

(*a.*) *Gentlemen:* The American Emigrant Company has entered already, with *great earnestness*, upon its system for *procuring emigrants and settlers* to occupy the lands purchased of your and of other counties, and the promise of success to these efforts is such that *no time can be lost* on the part of the company in perfecting its titles and getting its lands ready for sale to its purchasers.

It is especially desirable to the company, that *in those counties where, in all probability, its first settlements will be made*, suitable conveyances should be made by the counties to the company at once, and with the least possible delay.

* * * * * * *

(*f.*) You will observe the deed is *not to be delivered to us* until the *mortgage is made to secure your county* in the *fullest manner* for the performance of *all the conditions contained in the agreement* made between us. The trustees of the company reside in Hartford; Mr. Hammond is the president, Mr. Hooker is the treasurer, and Mr. Welch a director of the American Emigrant Company.

(*g.*) *As soon as possible* after we are advised of your action in this matter *we shall make and deliver* the mortgage. (Record, p. 91.)

EXTRACT FROM DEED.

(*c.*) And whereas, the said company does not ask such conveyance except, upon condition that the land and property so conveyed shall be fully mortgaged back, to the county to secure to the county the fulfillment, by the company of all the terms, and conditions of the said written agreement. Therefore it is resolved that this board does now grant, sell and convey, to the trustees of said company as requested, the land and property hereinafter mentioned and described, in the form following, that is to say. (Record, p. 45.) * * * *

(*g.*) It is hereby declared to be an *express condition* of this grant *that in case said county at this time has not fully obtained a perfect* title in fee to any of the said lands that any interest, claim, or title thereto, the county shall hereafter acquire,

under or by virtue of the said swamp land grant, shall inure to the benefit of the party of the second part without any further or subsequent conveyance thereof; any thing herein contained to the contrary notwithstanding.

(*k.*) The party of the second part takes this grant subject to all the provisions of the act of Congress of September 28th, 1850, and *expressly release the state of Iowa and the said county, from all liability for reclaiming said lands.* Given under the hands of the board of supervisors of the said county of Adams. By order of the board of supervisors.

(*l.*) *Resolved*, That the said conveyance in the foregoing form be executed by this board and duly acknowledged so that the same may be recorded, and when so executed be delivered to the clerk of the District Court of this county to be by him delivered to the said company, its agents or trustees whenever a mortgage in due form duly executed and acknowledged by said trustees and ready for record, shall be delivered to him the said Clerk, *which mortgage shall fully convey back to said county all land and property granted to said* trustees by this conveyance, and shall secure to said county the fulfillment by the American Emigrant Company *of all the terms and conditions of the said written agreement so on file as aforesaid*, so far as the same are to be kept and fulfilled on the part of said company. (Record, bottom p. 47.)

Delivery of the Deed.

Bixby—a witness examined by both parties, testifies, inters. 8 and 10, record, p. 181: (*a.*) A deed was made by the board of supervisors to the American Emigrant Company, September 7, 1863, for Adams County swamp lands, under the terms of the contract When the stipulated price, two thousand dollars, was paid by the American Emigrant Company to Adams County, *the deed then became the property of the American Emigrant Company.* I think the deed was recorded about that time. I don't remember whether I delivered the deed at that time or not. I *held the deed as agent of the American Emigrant Company.* It was their property *as soon as the two thousand was paid*, and if it remained in my hands after that date, *it did so as their property.*

There *was no such mortgage* delivered to me at any time. The two thousand was paid in two 7–30 bonds, the 19th June, 1865.

Int. 4: I was clerk of the district court, and by virtue of

the office, clerk of the board of supervisors of Adams County, from the year 1862 to 1868, inclusive. Int. 3, p. 106. I have been acting as special agent for the American Emigrant Company from the time they began to sell land in this county, till the present time. I commenced acting as special agent, February, 1865.

(*b.*) That said company shall cause to come into said county as many persons who shall become actual settlers as they would have to bring in order to fulfill said contract as it was previous to this change, but that such persons may settle on any other lands in said county, and that such settlement shall be deemed to be in fulfillment of said contract the same as though they all settled on lands so sold to said company.

CONCERNING THE APPOINTMENT *of James C. Savery, Agent.*

(*c.*) 3*d*. *Resolved*, That said county of Adams *pay the cost* and expense of such special agent, and his compensation, and that he is authorized to receive the proceeds of such settlement and *deliver the same to the board of supervisors of* said county. A true copy certified by auditor. (Record, top page, 74.) Adopted unanimously.

GUILTY KNOWLEDGE OF APPELLANTS.

Smurr,—a member of the board, testifies, record, p. 155, inter. 11: I cannot say that he (McKay) said positively that they knew the condition of the claims for money and scrip, only just what they could gather from circumstances; that he *thought* there would be no likelihood that the county would get anything.

Schooling—a member, testifies, Record, top page 163, inter. 30: McKay did not state his source of information about the condition of the claims for indemnity, scrip and funds. *He talked as if he had knowledge of it*, but I don't know that he gave his source of information.

Morris—testifies, Record, p. 167, inter. 8: He (McKay) said we would never realise anything on these affidavits; that they would never amount to anything.

Powell—testifies, Record, p. 198. inter. 17: It was represented to the board by McKay that the proofs which Mr. Davis took, that we had relied on, had failed to accomplish the object for which they were intended.

IT WAS A GROSS FRAUD and misrepresentation to represent the right to swamp land title and claims doubtful, for the act of 28th September, 1850, was a grant *in presenti*, and vested an absolute ownership in the State to all the swamp and overflowed lands. The confirmatory act of 3d of March, 1857, (11 Statutes at Large, 251,) was intended as a full and complete confirmation of all the selections claimed by the State; and to authorize the patents to issue without further delay. These questions have been fully decided by this court. See

Railroad *vs.* Fremont Co., 9 Wallace, 89.
Railroad *vs.* Smith, 9 Wallace, 95.
Allison *vs.* Halfacre, 11 Iowa, 450.
Lester Land Laws, page 549, No. 548.

The delay of the Secretary of the Interior to send a return list amounted to nothing after the confirmation. A list of the descriptions confirmed was filed in the Land Office, and the confirmatory act operated directly upon the tracts therein described. The railroad line was not adopted till the 24th of March, 1857, as decided by this court in the case of *Railroad* vs. *Fremont Co.*, *supra*. There might be delays in securing the adjustment, but no power of the Land Department could invalidate the right of ownership. It was absolute. To represent it as a doubtful right was a fraud. Nor was there any necessity to spend any money; the indemnity proofs were already filed, and there was no *honest* place where money was needed or could be used. Skinner, appellant's witness, testifies that *no proof* was required to ensure a patent for the four thousand acres of unpatented land in place; and as to the indemnity proof, the letter of the Commissioner, April 15, 1862, expressly shows that the Adams County proof was in *due form*. Here is definite proof as to the exact point, whether the Secretary of the Interior admitted the proofs of *other* counties or not, is entirely immaterial, as here is the direct evidence that the Adams County indemnity proof in question, was regular

and *in due form*, and would be taken up and allowed as soon as reached in the regular order of business.

McKay had represented to the board that the patented lands were *doubtful* as to title; that the unpatented lands in place were uncertain, and the indemnity proof worthless, and to maintain consistency he inserts in the agreement a clause like this: "*If the company obtains the odd sections so-called.*" In the deed to three thousand six hundred and eighty acres, prepared by him, after examining the United States patent in the State land office for the lands, he inserted this remarkable clause:

"It is hereby declared to be an express condition of this grant that in case the county has not at this time obtained a perfect title in fee simple to any of said lands, that any interest, claim, or title thereto, the county shall hereafter acquire * * * shall inure to the benefit of the party of the second part without further conveyance thereof."

These covenants are *covert* misrepresentations. They are pregnant *frauds*. Congress had made the grant *in presenti*, and confirmed it by description as to these very lands; the patent had issued, and McKay had copied from that patent the numbers of the land into the blank deed sent to the board. Then why insert this covenant in the deed, questioning the title of the county, unless it be to foster in the minds of the board the doubt before inculcated.

Barnett—the chairman—testifies, that "we thought the claim doubtful because McKay told us so, and we had *no other source of information* at the time to my knowledge."

Schooling—testifies, (Record, p. 159, inter. 13:) "I had no knowledge whether there were any patents for the two thousand acres or not."

If McKay was not guilty of actual fraud, he at least was dealing with public property in the hands of public agents who had no proper information as to the corporate rights. Added to the above, the representations made by appellant's agents, and retailed out to the people before the election, at his request, as to the settlement of these lands, the planting of groves and orchards, enhancing the value of property,

settling the county, and bringing property into taxation; not one *item of which has ever been made good.* And the conviction is confirmed that the board of supervisors and people were under a complete delusion and misconception, not only as to the real nature, extent, and value of the swamp land interest, but also as to the character of the party with whom they were contracting.

Appellant had its agent in Washington, another in New York, and McKay in Iowa. That they *knew* all about the real facts, and also knew the comparative want of knowledge by the supervisors and the people, the New York circular, and the positive declaration of McKay, and the written contract and deed, and the outcome of the agreement, fully establishes. And that McKay permitted the board and people to enter into the contract, under a complete delusion and mistake throughout, is fully proven. The agreement being obtained by such concealment and overreaching, coupled with such mistake and false conception of rights, whether criminally fraudulent, or innocently done, a court of equity will grant redress. The following cases are in point:

Warner *vs.* Daniels, 1 Woodbury and Minot, 90.
Gatling *vs.* Newell, 9 Ind., 572.
McAllister *vs.* Barry, 2 Hayward C. C., 290.
Miles *vs.* Thad. Stevens, 3 Barr. top., 37–35.
Daniel *vs.* Mitchell, 1 Story, 172–189.
Carey *vs.* C. C. & C. R. R., 5 Iowa, 364.
May *vs.* Snider, 22 Iowa, 525.
Wilcox *vs.* University, 32 Iowa, 367.

See also a celebrated case of Reynell *vs.* Sprye, in many of its features remarkably like this case determined in the court of appeals in chancery in England, reported in 1 DeGex, McNaughton & Gordon, pp. 696 and 697.

Also Mason *vs.* Crosby, 1 Wood. and Min., 342.
Smith *vs.* Babcock, 2 Wood. and Min., 246.
Hough *vs.* Richards, 3 Story, 659.
Smith *vs.* Richards, 13 Peters, 26.

Boyce *vs.* Fundy, 3 Peters, 210.
1st Story Equity Juris., sect. 193–193, a.
1st Hilliard on Vendors, page 325, sect. 3.
1st Hilliard on Vendors, page 328, sect. 8.
Fry on Specif. Per., page 269, note 1.
Fry on Specif. Per., page 274, note 4.

SECOND. Neither is appellee bound to prove an actual known fraud to be entitled to relief, but from all the circumstances of the position of the parties and the facts surrounding the transaction, the disportion of benefits derived under the agreement, inadequacy of consideration, and the farther fact that the property disposed of was public property, in which many people, who took no part in making the agreement, were interested, and their rights have been trifled away by ignorance, inadvertency, or by mistake or fraud, with at least one-third of the voters protesting against the agreement at the time; and the further and quite important fact that McKay was not only acting as agent of the *Vendee*, but then and there had in the private employ of the company two of the principal officers of Appellee, the clerk of the board of supervisors and chairman of the board, both of whom he had requested to represent the Appellant's interest in the county, for which the agent paid them. He had requested Barnett to represent the contents of the contract to the people for the company. (See Record, p. 176, inters. 8 and 9.) He had Bixby employed to do what they called "extra work," for which the Appellant paid him. What was that "extra work?" The *law* required the notices, copies of contract and proclamation to be posted, prescribed the places and method. The board had ordered Bixby, as the officer of the county, to carry out its vote on the submission. It was then his *duty* to write the copies under the law and see that they were posted, as a part of his official duty by law. He was diligent in circulating the representations of McKay among the people up to the last hour of the election. The people trusted these representations, and most of the witnesses refer to him as chief authority. Then instead of posting the proclamatiom and entering it on the record, and putting out in public places copies of the contract, as required by *law; he*, the officer and sole source of authority and information at that time, turns the whole question over to *McKay*, and posted only what McKay *directed*, and pur-

sued his orders altogether, not himself looking at the law, but entirely content that *he* had *followed McKay's orders*, and thereby discharged his duty, as he now claims, not knowing that he had posted but one copy, or where or when if others were posted. It is thus apparent that McKay was not only agent of the *Vendee*, but also directing, controlling, and secret and clandestine advisor and private dictator for the *Vendor*. From such surroundings, the court ought to presume fraud.

1st Story's Equity Juris., section 190–331–333.
Wilcox *vs.* University, 32d Iowa, p. 367.
Davore *vs.* Fanning, 2d Johnson ch., p. 255.
N. Y. Ins. Co. *vs.* Nat. Ins. Co., 20 Barbour, p. 470.

THIRD. Certainly the proof clearly shows that some very material matters were represented, treated, and acted upon as true in making that agreement vastly different, from which they turned out to exist, with the advantage of knowledge with defendants and a gross misconception of the whole subject-matter of the agreement by Appellee's agents. Appellee would, therefore, be entitled to relief on the ground of mistake.

Story's Equity Juris., sections 140–141–142–143.
Niles *vs.* Stevens, 3d Barr., bottom page 59.
Taylor *vs.* Fleet, 1 Barbour, p. 471.

FOURTH. And this relief will be granted although the bill does not make a direct and express charge of mistake, but generally in broad terms alleges ignorance and fraud.

Mason *vs.* Crosby, 1st Wood. and Min. C. C.. p. 342.
Smith *vs.* Babcock, 2d Wood and Min. p. 416.

FIFTH. That party in position to be benefited by fraud or who will obtain the benefit of the grossly unequal bargain is to be suspected if fraud exists.

Smith vs. *Babcock*, 2d W. and M., bot. 255.

SIXTH. A contract entered into with the impression that something will occur which never does occur, will not be enforced in equity.

2d *Hilliard on Vendors*, p. 225, note a, 226, sec. 3.

SEVENTH. If fraud is perpetrated or misrepresentations made by an agent and the principal persists in retaining the benefits derived therefrom, he thereby adopts the fraud, and will be held to the fullest extent.

1st *Story Equity Juris.*, sec. 193a.

In this case the agent was a general executive officer of the company and a large stockholder in the same, and also the agents appointed, authorized and paid by the company, the clerk and chairman of the board of supervisors in the county. The representations that the claims for land and cash indemnity were worthless, *was known to be false, before the deed was executed;* because there had been an allowance of the 748.60 acre of the iudemnity scrip. Also *before* the money was paid or *deed delivered* or any part performance made, the $4,303.45 *cash* in indemnity *was received.* It certainly was apparent at that time to appellant that the claim was not valueless, as he represented and induced the board to believe. It would have been his duty in equity then to have informed the county before the delivery of the deed that the agreement had been made under a mistake of facts, and, if, after informing appellee of the facts of the allowance of this cash and scrip indemnity and the amount paid upon the old proof, the agreement had been ratified as to that, possibly the company would be in court with clean hands. Instead of doing this, however, he took a part of the money so received wrongfully and paid the $2,000 and procured by the way heretofore described, the recording and possession of the deed. Here was a fraud that would taint the whole transaction and render the agreement itself void. The case of *Reynell* vs. *Sprye*, above cited, is a clear, forcible and well considered precedent, wherein the defendant had, by certain representations to the plaintiff of the doubtful nature of his rights, procured a very advantageous contract in writing to an interest in some land. By representing that it would require a *lawsuit* to settle the right and it might *turn out to be worthless*, the written contract was made, and some time afterwards a deed was made under the written contract. In the interim between the date of making the agreement and delivery of the deed the vendee obtained some additional and very important information, and evidence that plaintiff's rights were of vastly greater value than had been contemplated at the time of making the agreement. The defendant did not disclose this new knowledge to plaintiff, but procured the deed to be made and delivered as if the original facts and conditions still existed. Lord Cranworth held that it was the duty of Sprye, before accepting the deed, to have disclosed fully to the vendor the newly discovered facts, and as he had failed to do so, held that such concealment was such a fraud as vitiated the whole transaction, and the court

set aside both the deed and agreement. *Vide* 1st DeGex, McNaughton and Gordon, page 707 to 709. Upon its *facts* and the principles of law relating thereto, this case is very similar to the case at bar.

INADEQUACY OF PRICE.

The foregoing evidence clearly establishes that twelve thousand acres of land and indemnity claims *confirmed*, worth at minimum price $15,000, were sold for $2,000. The following authorities establishes the correctness of the circuit court's decree:

Domat Civ. L., Bk. 1, Tit. 11, sec. 9.—"In the sales of immovables, if the price be less than half the real value, the seller may get the sale to be declared *void*."

Fonblanque's Equity, p. 117, note *e*.—"Though courts of equity will not relieve against agreements merely on the ground of the consideration being inadequate, yet if there be such inadequacy as to show that the person *did not understand* the bargain he made, it may amount to fraud."

Story's Equity Juris., sec. 246.—"There may be such an unconscionableness or inadequacy in a bargain as to demonstrate some gross imposition or some undue influence, and in such cases courts of equity ought to interfere on the satisfactory ground of fraud, * * * and when there are other ingredients in the case of a suspicous nature, or peculiar relations between the parties, gross inadequacy of price must necessarily furnish the most vehement presumption of fraud." To same point, see also—

Woodfolk *vs.* Blount, 3d Haywood, 149.
Herne *vs.* Meeres, 1st Vernon Eng., ch. 465.
Howard *vs.* Edgell, 17 Vermont, 27.
Gwynne *vs.* Heaton, 1st Browns, ch. 9.
Holmes *vs.* Holmes, 1st Abbott, C. C., 530.
Hough *vs.* Hunt, 2d Ohio, 502.
Seymore *vs.* Delany, 2d Cowen, 537.

In *Wright* vs. *Wilson*, 2 Yerzey, 294.—That gross inadequacy of price is a ground for settting aside a sale, and this seems to be the established rule, by the great weight of authorities. See exactly in point—

Holden *vs.* Crawford, 1st Aiken, Vermont, 390.
McKinny *vs.* Pinckard, 2 Leigh, Va., 149.
George *vs.* Richardson, Gilmer, Va., 230.
Osgood *vs.* Franklin, 2 Johns, ch. 1.
Wintermute *vs.* Snider, 2 Greens, N. J., ch. 489.
Morlatt *vs.* Werwick, 18 New Jersey, Equity, 108.
Frye on Specific Perfor., sec. 279, n. 2.

IV. Failure of Performance.

(*a.*) It is a general rule of law when one party fails to perform a valid contract the other party may treat it as rescinded.

2d *Parsons on Contracts*, 5th ed., p. 678, notes *x* and *y*.

In this case the failure of defendant to perform his part of the contract in such a manner as to give the county the benefits of its stipulations, and failure to pay the price of the purchase, gives to plaintiff the right to rescind this agreement if it was otherwise valid.

Klein *vs.* Catara, 2d Gallison, C. C., 74, 75.
Mason *vs.* Crosby, 1 W. & M., 342.
Putnam *vs.* Wescoat, 19 Johns, top 79.
2d Hill *Vend.*, p. 225, note 1 and 226, secs. 3 and 4.
Fry on Specif. Per., sec. 593, note 1 and aut.
Story on Contracts, sec. 481, note 2, p. 486.
1st Parson's Cont., Tit. Failure.

Appellant was privy to the suit in Page County for fees for taking indemnity proofs, and were bound by the judgment. The appellant was a party to the suit and was notified in the first instance, and was discharged at its own application, and the suit continued in name of appellee. The appellant furnishing an attorney. (See Record, pp. 74–78, and Evidence of Moore, p. 204.) And Bixby testifies: (Record, p. 182, inter. 14–16.) "It was always my understanding that the Emigrant Company would pay the costs of the suit. I represented to the board that I thought the company would foot the bills of the suit." It is settled law that a privy to such a suit is bound by the judgment.

See Chicago *vs.* Robbins, 2d Black, 418.
Trustees of Newburg *vs.* Gallatin, 4 Cowen, 345.
Stoddard *vs.* Thompson, 31 Iowa, 80.

V. Entire Failure of Consideration by Appellants' Willful Act.

There is a clause in the agreement as follows: (Record, p. 44.) "Any contract now existing between the said county and any person in relation to said land or funds are to be respected and fulfilled by said company, as the board of supervisors shall decide to be just and right."

At the date of making this agreement the county was indebted to one Davis for surveying the swamp lands, and taking indemnity proof in 1861, under a power of attorney and contract made by Wm. A. Shields, a former county judge before the power of county government was changed to the supervisor system. (Printed in the Record, p. 81, Exhibit A.) At the time this agreement was made Davis was in the army, and after his return in 1865 he presented a claim to the board for service rendered under that authority, which was allowed a just claim. (See Record, p. 96, "A.")

This claim was, by order of the board, presented to the appellant for payment, who refused to pay the same. It was litigated by the appellant in the name of the county, and judgment was rendered for the full amount claimed, and the county was compelled upon execution to pay $2,735, judgment and costs. This sum appellant then *willfully* refused to pay, notwithstanding the above plain and positive agreement so to do.

The question of this claim became *res adjudicata*. It was a fixed and unchangeable fact that the Davis claim was a just charge upon the indemnity "fund and scrip." The judgments are in the Record, the execution and proof of payment. No constitutional authority, State or Federal, could modify or reverse it. The county was *compelled* to pay it, being one of the plain obligations assumed by appellant.

It is a well settled principle of law that when a party to an agreement *suffers the law to take* property given as *the consideration* of the agreement and dispose of it thereby defeating the benefits of the agreement to the other party, *the agreement will be held to be rescinded.*

Keys vs. *Granger*, 52 En. Com. Law, p. 905.
2d *Parson's Cont.* 5th ed. pp. 678–9, note X–y.

The judgment rendered against the county consumed the $2,000 previously paid and $735 besides. The law thus applied the payment to the liquidation of the incumbrance on the "fund." A demand was made for the appellant to pay the judgment; appellant promised, but failed, and upon execution the county paid the judgment. A committee of one was then appointed by the board, and a resolution of demand passed. (Record, p. 90.) The committee man went to Des Moines, more than 100 miles. The resolution was presented to Savery in person by Mr. Colton, when the said agent of appellant declared that (Colton's report, Record, p. 90) "*the company did not owe Adams County any money, and he would not recognize the demand.*" Another committee was appointed, and on the 4th of February another effort made to get the money; a demand was made at the appellants' office, but the agent in charge said he had no authority to act. The committee were informed that an authorized agent would be sent to Adams County to settle there (Record, p. 93); that the agent would be there as soon or before the committee could return and reach home. They did return, and after waiting seventy-seven days from the date of this last demand, reported their doings to the board on the 21st of April, 1869. More than two years had elapsed since the judgment was rendered; nine months after the appeal had been dismissed in the Supreme Court; six months since the first demand; four months after the county had paid the judgment off, and seventy-seven days from the last of three different demands. The rescinding resolution was passed April 22d, 1869, (Record, p. 93, 94 and 95.) Certainly defendants had a reasonable notice to pay this judgment; this is the only effort at performance ever made by appellant. Not a dollar has the county received that they could retain for their own use as purchase money under this agreement. Not a single settler has been sent into the county by appellant; not a barley corn's length of ditch or levee has been dug or built in the county. The fine *artificial groves* upon every forty, and the *overladen orchards* with *golden fruits*, the *enhanced valuation of property*, the *increased taxation*, the *plethoric treasury*, the rapid growth and settlement of the county, always so desirable in these new counties, once the visions of hope, are now realized disappointments. And the glistening church steeples, the commodious school houses and public buildings, once to be erected to the honor and prosperity of the public spirited citizens by the "liberal donations"

(see printed circular of S. P. Lyman) of appellant, are now demonstrated air castles; and instead of the laughing school boys, the song of the herdsman and the vesper bells we still breathe the swamp miasma; and our ears are nightly greeted with the pumping song of mud hens, and the croaking of bull frogs, which repose by day, and gambol at night around the same tussocks, and devour tadpoles from the same pools of their ancestors a hundred generations past. In the language of Justice Woodbury, 1st W–M., p. 90; "The consideration, and all the stipulations of the contract, have, as to appellee, turned out to be 'moonshine;' in fact the light of a *single harvest moon* would benefit appellee more than the results of this contract.

VI. Delivery of the Deed Procured by Fraud.

The sixth ground for relief set forth in the bill is that the delivery of the deed was procured and the deed put on record in violation of plaintiff's instructions and without her consent or authority.

The deed as executed by the board of supervisors by filling up the blank form prepared and submitted to them by appellant's agent, McKay, contains this stipulation as to its delivery. (Record, bottom page 47.)

"Resolved that the said conveyance in the foregoing form be executed by this board and duly acknowledged so that the same may be recorded, and when so executed be delivered to the clerk of the district court of this county, to be by him delivered to the said company, its agents, or trustees, *whenever a mortgage in due form, duly executed and acknowleged by said trustees and ready for record, shall be delivered to him, the said clerk*, which mortgage shall fully convey back to said county *all lands and property* granted to said trustees by this conveyance, and shall *secure* to said county the *fulfillment* by the American Emigrant Company of *all the terms and conditions of the said written agreement so on file as aforesaid so far* as the same are to be kept and fulfilled on the part of said company."

McKay had made this proposition to the board to induce them to execute the deed in his letter of September 1st, (Record, top page 92,) where he says:

"The deed is *not to be delivered* to us until the mortgage is made to *secure your county in the fullest manner for the performance of all the conditions contained in the agreement made between*

us." Further on he says: "*As soon as possible* after we are advised of your action in this matter we shall *make and deliver the mortgage.*"

The evidence shows (see Bixby's evidence, Record, p. 181, inter. 11,) that *no mortgage* was ever made. That no authority was ever given for the delivery of this deed, that instead of making the mortgage as promised, the deed was left with this clerk, and in February, 1865, the defendants appointed this same clerk a special agent of their own, and that on the 19th of June, 1865, when the $2,000 was paid, the clerk as agent of the company assumed to hold the deed as the *property of the company*, without the execution of the mortgage, and placed the deed on record and sent it to the company. Thus, this sworn officer of the county, ex-officio clerk of the board, by them entrused with this public trust and confidence; by his bond and oath, and by his trust, bound to obey the conditions of delivery, assuming to act also as a secret special agent of the defendant, and then delivering the deed in direct violation of the plain written conditions of the deed itself to the irreparable injury of the county. On the part of the appellant, this was a virtual *grabbing*, and fraudulent, and *forcible possession* of the paper and no delivery with the assent of the county for the use and benefit of the grantee.

Wil *vs.* Iliff, 13 Ohio State, 250–4.
South Life Ins. Co. *vs.* Cole, 4 Florida, 374.
Everts *vs.* Agnes, 4 Wis., 351.
Everts *vs.* Agnes, 6 Wis., 462.
Fairbanks *vs.* Metcalf, 8 Mass., 230–9.
Stiles *vs.* Brown, 16 Ver., 563.
Church *vs.* Gilman, 15 Wend., 656–8.
Hulic *vs.* Scovill, 4th Gill, 178.
Shepherd's Touchstone, 57, 58, and 59.
2d Blackstone Marg., page 307.

SECOND. If the grantee get a deed into possession and have it recorded without the assent of the grantor, by fraud or mistake, *no title will pass*, and the fraud or mistake may be proved parolly.

Hadlock *vs.* Hadlock, 22d Ill., 388.
Althrop *vs.* Comstock, 2 Paige, top, 484.
Chadwick *vs.* Weber, 3d Greenleaf, Maine, 132.
Cutts *vs.* York Co., 18 Maine, 200.
Black *vs.* Lamb, 1 Beasly, N. J., 108–16.
Roberts *vs.* Jackson, 1 Wendell, 486.

THIRD. If the grantor deliver a deed properly executed into the hands of a friend or other person than the grantor to be held by him until *a condition is performed* or something then named is done. *No title will pass until the condition be performed.* And the delivery of the deed to the grantee without condition performed is *no delivery.*

Black *vs.* Shrew, 13th New Jersey, 457.
Graves *vs.* Dudley, 20 N. Y., 76.
Parker *vs.* Parker, 1 Gray, 409.
Younger *vs.* Guilbear, 3 Wall., 636.
State Bank *vs.* Evans, 3 J. S. Green, N. J., bot. p. 159.
Everts *vs.* Agnes, 4 Wis., 351.

FOURTH. And a court of equity will set aside and cancel the deed, holding the fraudulent or improper grantee as a trustee for the grantor.

Vide Story Equity Juris., sections 700 and 1265.
Carey *vs.* C. C. & C. R. R., 5th Iowa, 557.

FIFTH. In this case the board of supervisors deposited the deed with their own clerk, the officer declared by law to be the only and proper ministerial officer of the county and custodian of the records and papers belonging to the board. This was equivalent to retaining it in their own possession, the wrongful act of the clerk in assuming to act for appellant and pretending to hold the deed for them as their agent in direct violation of the condition of delivery named in the deed avoids the delivery *in toto.*

Revision, section 319.
Story on Agency, 7th ed., sec. 211, note 1.
N. Y. Ins. Co. *vs.* Nat. Ins. Co., 20th Barbour, 470.
Campbell *vs.* Walker, 5 Vesey, 678.
Davore *vs.* Fanning, 2 Johns. Ch., 255.

When an agent acting in a fiduciary relation assumes to act for both sides in making or executing a contract, equity will set aside the conveyance *without proof of fraud* even though the consideration appears to be fair.

Vide Davore *vs.* Fanning, above.

VII. IGNORANCE OF OFFICERS AS TO SUBJECT-MATTER—FRAUD AND BRIBERY IN CONDUCTING THE ELECTION.

FIRST. The foregoing evidence clearly establishes that neither the members of the board of supervisors or people had any just conception of the value of the property they

were selling, but were in *gross ignorance* in reference to both the lands and indemnity claims. Every living member of the board at the time this evidence was taken (1871), testifies; and they all state substantially the same thing. The clerk of the board, John Bixby, who might be supposed to know something of it, and who gives his evidence for the appellant, states expressly, on cross-examination (Record, p. 189, cross-inter. 15): "In June, 1862, I did not have any clear understanding of the condition of the swamp land funds or claim." And yet this is the man hired by the Emigrant Company to make speeches for the proposition. And all the evidence clearly shows that they had no source of information except appellant's agent, McKay. The county did not offer its lands for sale to the company, but the agent, McKay, went there and *solicited* the board to sell to him, he making many *fine promises*, none of which have ever been performed. The supervisors were all farmers in a new and sparsely populated county, where there was no paper published or other means of obtaining information. The case of the *American Emigrant Co.* vs. *Wright County*, No. 341, in this court, October term, 1877, not reported, is exactly in point.

SECOND. The revision of Iowa, section 251, provided that in submitting questions to the people:

"The *whole* question, including the sum to be raised or the amount; the *whole regulation*, including the time of its taking effect and penalty for violation, should be submitted. And revision section 988, under which this contract was submitted, required that *three copies* of the contract should be posted in *three* of the most public places in each township *four* weeks before election, together with a proclamation of the officer as to the manner of voting," &c.

Now the evidence is conclusive that not a *single* voter can be found who ever saw any copy of the contract posted. Larimer testifies that he looked for such paper, but none was ever posted. The sheriff who posted other election notices that year says *no* such copies were posted; and Bixby, the clerk, says he *did not look at the law*, but was *guided* by

what McKay *directed;* that he *relied on and trusted* to McKay entirely.

It is positively proved and not disputed, that the words: "*For the sale of swamp land,*" were written on the tickets. This would cover the two thousand acres of land as explained to the voters by Barnett, Smurr, Harlow, and Schooling, members of the board. But the proposition canvassed was "*for the contract* (Record, p. 73), from which it is clear that the proposition canvassed and the one voted upon were very different. If such an election, or contract obtained by the consent of electors under such facts, is *not void*, as Appellee claims it is, certainly it was a *fraud* in equity.

THIRD. The evident haste in which the whole business was transacted is a strong argument against its fairness. McKay's proposition was made the 3d day of the September session, 1862, the last session before the October election, and only about four weeks before the election. It was accepted and adopted by the board, and the contract made the same day, without any time to consider or to investigate the subject by the board (see Record, p. 72). Further the chairman of the board, Barnett, and the clerk, Bixby, both of whom *signed the contract*, were at once employed to use their influence at the election, *and agreed to be paid*, and WERE PAID!

Look at the contract. Whose signatures are to it? Barnett! Bixby! McKay! three officers and employees of this company. What chance was there for a *fair show* to the county? Such surroundings conclusively establish fraud. Employees of the company signing for the company! Employees of the company signing *for the county!* The only wonder is that they stipulated for the county to receive any part of *her own.* It would have been a success, no doubt, at less than the sixteen cents per acre.

VIII. SWAMP LANDS.

The lands involved in this suit are swamp. It is so *alleged* in the *petition* and *admitted* in the answer. The list in evi-

dence, Record, pp. 121–124, shows the extent of overflow and character of the lands. The county surveyor, Trippett, makes oath to them as such. The surveyor-general certified them as such. They were duly reported and *confirmed* to the State as such by the act of 3d of March, 1857. Hence they are *unfit for cultivation*, and must be fitted therefor by ditches, drains, and by the application of the proceeds of the lands themselves.

SWAMP LAND, under the act of 28th September, 1850, is defined as being "such lands as are usually unfit for cultivation, in ordinary staple crops, such as corn, wheat, oats, &c., in ordinary and average years; not such as are utterly *worthless* by reason of overflow, but such as cannot ordinarily be successfully cultivated."

Thompson *vs.* Thornton, 50 Cal., 142.
Kernan *vs.* Griffin, 31 Cal., 465.
Kernan *vs.* Allen, 33 Cal., 542.
Keller *vs* Brickley, 78 Ill., 133.

That municipal organizations, such as counties, may take title to land, and execute trusts, is held by the following cases:

Videl *vs.* Girard's executors, 2d Howard, 127.
Chambers *vs.* Saint Louis, 29th Mo., 543.
Hill on Trustees, 3d Am. Ed., side page 45.
Dillon on Mun. Corp., sect. 437.
Bell Co. *vs.* Alexander, 22 Texas, 350–364.

When a trustee has an interest in the trust property and conveys the property, the deed is *void*, except as to the interest of the trustee; and no property, public or private, can be acquired in the trust property in violation of the terms of the trust.

Price *vs.* Methodist Church, 4 Hammond, Mich., p. 547.
Story Equity Juris., sects. 1257–1258, n. 2 and 3.
Church *vs.* Marine Ins. Co., 1st Mason, 341.

A trustee will not be allowed to purchase at his own sale

nor acquire any profit out of the trust property at the expense of the trust.

Story's Equity Juris., sects. 465–1258.
Fox *vs.* Harrah, 1st Ired., ch. 358.
Tiffany & Bullard on Trustees, p. 481.

IX. Appellant's Defense.

Appellant in its answer claims that the Adams County indemnity proofs were rejected, and were bad at the time McKay represented them as such. The replication denies this. Appellant introduces a circular decision of the Secretary of the Interior, of June 30th, 1862, *suspending* the indemnity claims of Louisa and Fremont Counties, Iowa; on the grounds that only *one* witness was sworn, and that the witness should have known the land in 1850, &c. And claim that the ruling in that case included the Adams County proofs, (Record, p. 230.) The Adams County proof being filed shows that these objections would not apply to them. (Record, pp. 130–131.) The Adams County proof was by *two* witnesses, who knew the land in 1850, and testify definitely to its character, the credibility of these two witnesses are certified to by the probate judge of the county, and clerk of the District court, in all respects complying with the Secretary's decision. To make its defense plausible, Appellant should have set forth a copy of the Louisa and Fremont County proofs, to show the similarity; until this is done it has no connection, to justify its allegation.

Besides the witness Powell, who saw the circular which was before the board, and to which *Smurr* refers, positively states that the circular dated June 30th, 1862, was *not* the one; for he says the county could easily have complied with that one, and could not comply with the one before the board. (Record, top page 200.)

Second. Appellant claims on page 39, of its brief, that by the modification of the contract by the board September 7th, 1864, (Record, page 193,) the *time* of sending settlers was *indefinitely* extended, and they were not bound to send

in settlers at all, because the time was not fixed in the modification. To this Appellee says that it was not intended to change any thing but the *place*, where the settlers should settle. On other lands, and not on swamp lands, as will clearly appear by the modification. 2d. That the modification could not be made except by submitting it to the people the same as the original contract.

3d. That if it be true that the former time was abrogated and no time *fixed* in the modification, then the law would construe it, that the settlers should be sent in a *reasonable* time. The claim of Appellant as to being relieved by the loose transaction of the board is another exemplification of *obdurate cheek* and *dishonesty*, only equaled by their *frauds* in the main transaction.

THIRD. Appellant claims that it paid Grinnell for getting up the old proofs of 1861, which were the basis for the indemnity *without notice* of the Davis claim. To this Appellee replies that the receipt of Grinnell is dated November 15, 1866, whereas the two letters of Davis to McKay, informing him of the claim, were dated—one in 1864 and the last in March, 1865. The suit of Davis was begun in March, 1866. Hence, it is clear the payment to Grinnell was made pending suit with full notice. Further the contract provides that the company shall "pay such charges against the indemnity funds and claims as the supervisors shall decide to be just and right." Now, the claim of Grinnell and Cooper was *never* presented to the supervisors; its payment therefore was *not* in accordance with the terms of the agreement. Further the decree of the circuit court sought to be *reversed* provides for its repayment by the county if it is found to be paid out according to the contract.

FOURTH. Statute of Limitations.—Appellant claims in his brief, page 52, that the Statute of Limitations bars this action in *five years*. But he fails to show the court when the *five* years began to *run*. The time fixed *for making* the improvements in the agreement was January 1, 1865, and the action was begun in about *four years* thereafter. Besides

the statute of Iowa provides that actions for recovery of real property may be begun in *ten years*. Further, there is *no plea* of the Statute of Limitations in the answer. Equity courts do not notice *arguments* as to limitations where there is no plea of that statute.

FIFTH. Executed contracts.—On page 53 of brief, the claim is made that the contract is *executed* and, therefore, cannot be rescinded. Now to this claim it is only necessary to refer to the argument of Appellant on page 28, at the bottom of the page. He says: "Would it not be sufficient to object to this contract *when the company seek to enforce it?* That it may never do." If it is *already* executed, as he says, why will counsel waive the execution of a part of it, in order that the executed part may be held conscionable?

Only two thousand and ten acres of land have been conveyed, a part of that has been sold by them—to that the county can make conveyances; to the unsold a deed may be returned, the company accounting for the proceeds of the sales, as to the one thousand acres indemnity lands and four thousand and twenty-seven acres lands in place, no conveyances need be made. The circuit court's decree is admirably just for the Appellant upon all these points. Furthermore, courts of equity do not always require that the parties shall be placed in precisely the same positions, where the action is between the original parties to the agreement, and when there is *fraud*, or when property has been procured by fraud or misrepresentation. The fraudulent purchaser cannot defeat a rescission on the ground of a change of condition nor avail himself of such change. See in point the following cases—

Gatling *vs.* Newell, 9 Ind., 572.
Ray *vs.* Haviland, 12 Ind., 364.
Frost *vs.* Lowry, 15 Ohio, 215.
Martin *vs.* Roberts, 5 Cush., top 129.
2d Parson's Contract, 5th ed., p. 580, note *v* and *w*.

As to the cash indemnity, Appellant can be required to disgorge its ill gotten gains, and certainly as to that it will be in *statu quo*.

SIXTH. Ratification by estoppel.—On page 54 of brief Appellant claims that the Appellee has for seven years recognized the validity of this contract, and allowed the company to go on expending money, paying taxes, &c., and is thereby estopped. To this we say there is not a glimmer of proof anywhere that the company has paid a farthing of taxes at any time. The agreement expressly provides that "no taxes *are to be levied on the land*," (see Record, top p. 44.) The presumption in the absence of proof is that no taxes have been assessed. As to the other points Appellee says that by the original agreement Appellant had *eight* years to settle and drain all the lands.

Appellee certainly could bring suit during that time, as no estoppel ought to arise before the time to make the settlements had expired. Had Appellant claimed that this suit was brought *before* the time of performance had expired, and sought to *abate* the action, because a right of action had not yet accrued, there might have been some grounds for the argument. Limitations and estoppels don't apply to written contracts before the time of performance has expired. Besides, Mr. Savery testifies (Record, p. 220, ans. 19) that in 1864, '65, '66 the people of Adams County *threatened repudiation* of the contract, because the company could *not perfect their title*, and gives this as a reason for not *settling* the lands.

SEVENTH. As to the claims of Appellant concerning *fraud and collusion* in the Page County suit, it is clearly established by the testimony of Morris, (Record, p. 168, inters. 18–21.) And by the evidence of Bixby, (Record, p. 182, inter. 14.) And by the deposition of Judge Moore, (Record, p. 204.) That Appellant had the *whole control* of that suit itself. That attorneys employed by it managed it to the end, and the Appellant agreed to abide the suit and pay the judgment, and that after the suit was ended it went back on this agreement as upon all other, according to custom. As to the letters of Davis, they were written during the *war* by a soldier who desired the settlement of business which he had no

and ranges 32 and 33 in the Chariton district. Also by looking at the description of the lands it will be seen they are all in ranges 34 and 35 in the Council Bluffs district, and by comparing the number of the land in this allowance of seven hundred and forty-eight acres of scrip with the other lists upon which indemnity was allowed, all of which are given in the Record, it is found that *no scrip indemnity has been* allowed *at any other time* for lands in those ranges in that district. That allowance covered *every tract* located with warrants, in that district. Not an *acre* of scrip indemnity has ever been claimed by the county for swamp lands in that district except upon the *exact* lands there described.

Further. It is conclusive by the Record, p. 142, that Savery did not *file his bond* nor *take* the oath of office as agent of Adams County until June 24th, 1863. The law of Iowa required that before he as such agent "did any act," he must give a "*bond*," and qualify. The seven hundred and forty-eight acres of scrip indemnity was allowed and issued more than two months before Savery did or could act as agent of Adams County.

Further. And still more forcible is the statement of the Commissioner of the General Land Office, Mr. Edmunds, in the letter of February 23d, 1864, to the Secretary of the Interior (Record, p. 135). Mr. Edmunds transmits twenty-one packages of affidavits for fourteen counties in Iowa sent him by the Appellant, covering three hundred thousand acres of land in the following counties, viz.: "Wright, Cass, Warren, Shelby, Wayne, Green, Clark, Ringold, Crawford, Carroll, Taylor, Calhoun, Franklin, and Winnebago." But *Adams County* is *not* among them. Mr. Edmunds is evidently giving the Secretary a summary of the transactions of Appellant. He would not make an omission as to Adams County had the claims of that county been involved. It is clear that Adams County claims were not included in the controversy, and that Savery had nothing to do with them.

Further. The Commissioner tells the Governor of Iowa

what *Savery was doing*, in the letter of 22d February, 1864. (Record, p. 134.) He was out in Green and the other counties procuring *fraudulent* affidavits, such as those of John Tyler, John Coony, and Mason Lynn, referred to in the letter. Appellee calls especial attention of the court to these papers. Appellant must have the decree reversed by this court upon the testimony of this man, if at all.

Further. Mr. Skinner was the resident agent of Appellant at Washington, and engaged exclusively in managing its affairs in the Land Office, at a salary much greater than the Government allowed him as clerk. He certainly could be posted on the proofs of the sixteen Iowa counties in which Appellant was interested. If the Adams County proofs were among the first allowed, he ought to know that, and the character of proof, yet, he says, on cross-examination, when asked directly—(Cross-inter. 7, p. 214,) "Do you know anything personally about the Adams County proof? if so, state it fully. Answer. *I do not recollect anything about that proof.*" Now, if the Appellant was prosecuting the Adams County case, as Savery testifies, certainly Edmunds or Skinner would know something of it. It seems that Savery has taken the burden of swearing this case through *alone.*

Further. The *dishonest* and immoral conduct of Savery, as agent, casts a shadow upon his testimony. By the resolution of the board appointing him, it is expressly stipulated that he was to *deliver the* "*proceeds*" of any indemnity received to the board of supervisors. (Record, top page 73, fig. 3.) The conditions of his bond and oath are of the same import, (Record, p. 182,) yet Mr. Savery collects thousands of dollars of money and land scrip, converts the same to his own use and pays it over to his company, and *does not* as much as notify the supervisors of its receipt. In the catalogue of honest transactions, where is there any place for such conduct?

XI. The Land Sharks.

Why the Department of the Interior was averse to allowing claims clearly appears in the evidence, and to allow defendants to set up and avail themselves of the rulings as an excuse for their false representations, without exposure, would be to silently permit them to enjoy the fruits on their wrongs to the satiation of their insatiable avarice.

The Department of the Interior *never refused* the just claims upon the old proof of any State or county when the proceeds of the adjustment were going to the State or county; *millions of dollars were paid as cash indemnity*, and millions of acres of land allowed the Southern and the Western and North-western States. Prior to 1862 the State of Iowa was granted railroad grants for five belt lines across the State, in the aggregate eighty miles in width, the odd sections to the railroad and the even sections to be sold at $2.50 per acre. The county of Adams was in this belt, and there were after that time no lands to be got at $1.25 per acre in this vast area of the State, notwithstanding the assertions of the veracious attorney of Appellant to the contrary.

"The attention" of speculators, and among them this Appellant, was directed to these swamp lands, which by law might be purchased at $1.25 per acre. Their method of operating was to purchase the "*swamp land interest*" "fund and claim" for a nominal sum, and then select lists of swamp lands in great quantities, and by *means of sham proofs* commit the grossest and most gigantic frauds upon the Government. Mr. Savery testifies, Record, p. 217, inter. 5:

"I was told in so many words by the Commissioner of the General Land Office and the Secretary of the Interior, that the greater portion of selections of swamp lands made in the State of Iowa, and the proofs thereon to sustain its swamp character, so far as it had been made, was a gigantic fraud on the part of the counties to secure an immense land grant that was never contemplated by the swamp grant."

And Commissioner Edmunds fully explains the cause of the regulations; and the reasons of the supposed *fraud* are clearly set forth in his letter of the 11th of October, 1861, very kindly furnished us by defendants in their evidence, Record, p. 227:

"In the progress of this business it became apparent that

great abuses had arisen in making such selections through individual speculation, first in the transfer by the States of their interest to the counties, thence to individuals who procured and filed *ex parte* proof. The proceedings of the Department show *efforts to correct the same by more stringent regulations in that respect.*"

"The practice which has since followed these instructions, in my judgment, should be *amended* by the adoption of further means in order to place the character of such selections beyond question or controversy. This is due alike to the States as well as the United States."

From which it is quite clear that the Commissioner's sole motive in investigating more stringently the swamp selec-lections is based upon the fact that the land and money had *been transferred to private speculators*, and no longer belonged to the *State* or counties, and the proof was *not public* but *private*, and *ex parte*, and that it was due to the honor of the State to see that the United States was not defrauded by the transfers. But still stronger and more direct is the record of Appellant's counsel, the Hon. J. A. Harvey, at one time the Register of the State land office of Iowa, having these very matters in charge, in his official report to the Governor of Iowa, on the 16th of November, 1865, as reported to the 11th General Assembly, he says—as if by inspiration imparting light upon his present very strange and inconsistent argument—Record, p. 243:

"Early in the administration of this grant, the Department seemed to receive the impression that Iowa was acting in bad faith; that she had selected a large amount of dry lands, and that, as if conscious of being in the wrong, and wishing to avoid difficulty with the General Government, she had transferred her interest to the counties, and the counties to private *speculators* and *land-sharks*, who, by means of this grant, are endeavoring to perpetrate a *gigantic fraud* upon the General Government. I say such seems to have been and still to be the impression at the Department at Washington, *and to its prevalence, in a great degree if not altogether, may be attributed the difficulty we there meet with.*"

This is the official report of a sworn officer of the State to the General Assembly of Iowa, concerning a matter in

his charge, and is both the law and the fact, and from which Mr. Harvey cannot now either retreat or gainsay. It may be assumed, then, as an established fact, that the instructions and rulings of the 27th of June, 1862, did not apply to those counties whose lands had *not been transferred to private speculators*. That it was not the design of the Department that those rulings which, while they must of necessity include by general words a whole class of lands or proofs, were not intended to apply to those cases where the State or county claimed the lands or indemnity in their public capacity. It was the *speculators*, the *ex parte proof*, as Mr. Harvey terms them, the "*land-sharks*," who must meet these stringent conditions.

XII. Who Secured the Change of Ruling.

The Honorable J. A. Harvey, Register of the State Land Office in 1865, in his report to the 11th General Assembly, gives the State of Iowa the official facts as to who obtained a change of the decision of the 27th of June, 1862, a copy of which is found in the Record, p. 241, Ex. B., as follows:

"At the *interposition* of our *delegates in Congress*, the Secretary reviewed, and so far *changed his decision* as to receive and consider *all proof* for indemnity *filed* in the General Land Office prior to 27th June, 1862. But all filed *subsequent* to *that date* must conform to the *new instructions*, thus making it necessary to retake a large amount of proof, at great expense to the counties."

Here we have the official report of a State officer that it was not the Emigrant Company, nor by their expense that the *old proofs* so far as they may have been suspended, were afterwards allowed, but it was by the interposition of *our* delegates in Congress that the ruling of the 27th June, 1862, was changed.

As to the diversity of statements of Mr. Harvey, as register, and as attorney of Appellant, the contradictions are so palpable and so overpoweringly in favor of his official report, and the insincerity of his last assertions in the argument so

flagrant, that the matter is submitted to the tender mercies of the court, with the single remark that Mr. Harvey is not a Ruggles or a General Lyman, but only calls himself a "common man," not one of the "great lights" of the company, and Appellee expresses the hope that the court will deal accordingly with his assertions in the brief.

XIII. Claim for Damages.

Appellee asks this court for an order for the assessment of ten per cent. damages and attorney's fees, for delay in taking this appeal, for the following reasons:

1st. The appeal has delayed proceedings from the date of filing the appeal bond, December 1st, 1874, a period of four years, (Record, p. 246.) During which time Appellant has retained in its hands $6,075, indemnity cash.

2d. The appeal was taken for delay, because Appellant failed to file the transcript, and Appellee was obliged to do so, as proved by the Records of this court.

Appellant submitted the Wright County case, tried in the circuit court with this cause, and involving the same questions as are involved in this cause, *in print*, but demanded oral argument in this cause, thus delaying the trial.

3d. It appears from the Record and decree that Appellant had no just ground for appeal, and that the appeal was taken for delay.

4th. No errors have been assigned by Appellant in the brief filed.

Respectfully submitted,

FRANK M. DAVIS,
RALPH P. LOWE,
Solicitors for Appellee.

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Supreme Court of the United States.

October Term—1878.

AMERICAN EMIGRANT COMPANY,
APPELLANT,
vs.
COUNTY OF ADAMS, APPELLEE.

No. 85.

MOTION BY APPELLANT FOR REARGUMENT.

BENJ. F. BUTLER,
O. D. BARRETT,
Counsel for Appellant.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1879.

argued

Supreme Court of the United States.

October Term, 1878.

THE AMERICAN EMIGRANT COMPANY,
APPELLANT,

vs.

THE COUNTY OF ADAMS, APPELLEE.

No. 78.

MOTION.

The appellant moves the court for an order to allow a reargument of the above-entitled cause, and in support of said motion, says :

The appellant is well aware that there has already been a rehearing asked for by counsel representing the appellant, upon the ground that the decision of this court was based upon the interpretation, effect, and propriety of the act of the legislature of Iowa, passed March 22, 1858, wherein the motion alleged that the contract was not made under that act, but under the act of said legislature of April, 1862, amendatory of said act of 1858. And as reasons why said motion should be granted, certain suggestions were set forth in the motion, showing the difference between the provisions of said acts. But the appellant is advised and believes that such differences do not affect the principle upon which the decision in the cause was based;

that the same was equally applicable to the force and effect of either act, and while the appellant is not informed as to the grounds upon which said motion was negatived by the court, yet the appellant is content to acquiesce in the decision.

The present motion is founded upon different considerations of fact which do not appear to have been brought to the attention of the court in argument, and which the court have not passed upon in its decision, and also certain material matters of law which have not been considered passed upon or adverted to by the court in setting forth the grounds for its decision; and also because the decision, if it stands, will only serve to open a new career of litigation between parties supposed to be affected by the scope and effect of that decision, and the affirmance of the decree of the court below.

To make the reasons why the present motion should be granted specifically apparent to the court, it will be convenient, if not necessary, to succinctly state the case.

First, as to the Parties.

This is a bill in equity brought by Adams County, Iowa, complainant, against the appellant, described to be "a private corporation or partnership of the city of Hartford, a citizen of the State of Connecticut." (Record, p. 37, amended bill.)

The appellant is the only party defendant.

The bill alleges that a certain contract concerning lands called "swamp lands," and certain indemnities and securities to accrue from the United States to the complainant, were obtained from the complainant by fraud and misrepresentation of the defendants, made to the officers and people of said county. It also alleges that a certain deed of indenture of said lands, set forth as Exhibit "B," (*Rec-*

ord, p. 45,) made the seventh day of September, A. D. 1863, "between the COUNTY OF ADAMS, in the State of Iowa, of the first part, and ANDREW G. HAMMOND, JOHN HOOKER, and H. K. W. WELSH, all of the city of Hartford and State of Connecticut, trustees, and in trust for the American Emigrant Company, of the second part: *Witnesseth*, That said county, * * * in consideration of the sum of two thousand dollars to said party of the first part paid by said company, the said party of the first part doth hereby sell, assign, transfer, and quit claim to the PARTIES OF THE SECOND PART AS SUCH TRUSTEES AS AFORESAID, all and singular the lands and real estate hereinafter mentioned and described," being the *locus de quo*, is void, because the vendor was deceived and defrauded by false representations to obtain the same, and because the lands were illegally sold in this, that the price per acre was less than one dollar and twenty-five cents, that being the rate fixed by the law of the State of Iowa for such lands; and also that said deed should be set aside because the delivery thereof was obtained by fraud and collusion with the clerk of said county, *it* having been placed in *escrow*, and because no mortgage had been given back upon said lands to secure the payment of the purchase money.

The bill also alleges as cause for setting aside the contract and deed, the inadequacy of the consideration and non-fulfilment of the terms of the contract by the appellant.

The bill also prays an account of the money received by the appellant for the sale of said lands, as well as for said indemnity securities from the United States; and also prays that in case the contract should not be rescinded, judgment should be given for two thousand seven hundred dollars, and interest in favor of complainant.

But the bill nowhere offers or tenders a return of the

consideration money received for said deed, nor the money expended by the appellant on account of, and in part execution of, said contract.

THE ANSWER DENIES, SPECIFICALLY,

each and every allegation of deceit or fraud, and denies any collusive combination with said county clerk in receiving the deed, and alleges that the consideration was paid in money at the time of the delivery of the deed, so that no mortgage was required to secure the same, and avers the payment of large sums of money, amounting, as is shown by the testimony and found by the decision of this court, to more than six thousand dollars by the appellant in behalf of the complainant in carrying out the transaction; and avers that both deed and contract were submitted in due form for the ratification of the people of the county at an election duly called for that purpose, and were duly ratified by a majority of the people of the county voting thereon; and that there had been sold of said two thousand acres of land more than fifteen hundred acres to actual *bona fide* white settlers in execution of said contract, and all of which is found to be true by the decision of this court.

The judgment in the court below sets aside both the contract and the DEED, because of their being obtained by false representations and deceit, and for no other reason whatever, and orders a rescission of the contract, and that the deed be set aside for that cause alone, and orders an accounting between the parties, and refers the case to a master to state the account.

The decision of this court does not sustain the finding of the court below upon the grounds of fraud and misrepresentation, or upon the ground of inadequate consideration, or upon the ground that the lands were sold by the deed

for less than one dollar and twenty-five cents per acre against the laws of Iowa, as on the latter point this court might well do, because the contract which subsequently terminated in a deed was not for the sale of any land of which the county had the title, but of lands which by possibility the appellants by expenditure of time and money might acquire a title from the United States and vest the same in the county.

Thereupon it is respectfully submitted that we may dismiss all the allegations of the bill charging fraud, deceit, and illegality in the contract *and deed*, because they have been negatived by the decision of this court, which proceeds to dispose of the case, and afford relief to the party by affirming the decree of the court below upon grounds not passed upon by that court, nor set forth in the bill, nor upon which the complainant asks relief, and upon grounds which it is respectfully submitted the complainant could not have the interposition of a court of equity in his behalf had he prayed for it, being found by *the decision of this court to have been "a confederate with the defendant in committing a spoliation of a trust fund," and "contributing" to the unlawful design and "scheme," because of which the court sets aside that very transaction.*

Striking out, therefore, as the decision of this court does, all of the charges in the bill and the replies thereto in the answer pertaining to the frauds and deceits claimed, the illegality and inadequacy of consideration and non-performance of contract, which last could not affect the deed, and only the contract as an executory one, we then have a bill simply alleging a contract by the complainant to sell land to the appellants, and a deed transferring and quit-claiming certain lands to certain persons named as trustees for the appellant upon certain conditions to be performed by said trustees, to wit, that they will do all that the State

of Iowa ought to do, and the United States required to be done, in draining and reclaiming said lands, and an answer that the contract, which had been duly executed by the officers and ratified by the people of the county, had been sufficiently performed, and that the deed had been duly executed to the parties of the second part as trustees, as alleged, and the consideration money paid; and, under the decision of this court, no evidence disturbing these allegations of the answer is found.

Upon this state of the pleadings what can be done by a court in equity? No stress is here put upon the want of prayer for relief in this behalf, because the prayer for general relief covers all prayers, being, as it was said by an old equity pleader, the next best prayer to the Lord's Prayer. Still, under the prayer for general relief this court has frequently held that relief can only be granted upon the grounds and charges set up in the bill. Can the court, upon this state of the pleadings, raise for itself reasons for a decree not set up in the bill, and decide the contract void, and set aside the deed on the ground of collusive confederation under the forms of law by the complainant, and the State of Iowa through its legislative action and the defendant, to defraud the United States, for this is the opinion reached by the court. (*See Opinion, p.* 5.)

It is respectfully submitted that so to do is not within the proper action of a court of equity under the circumstances of this case.

I. For Want of Proper Parties,

Entitled to relief on the one side, and competent to defend and be decreed to give relief on the other.

The complainant, the County of Adams, is bound by the

decision of the court to have held this land subject to a trust imposed upon it by the statutes of the United States. It is not now doubted that a municipal corporation, within the scope of its power, can take and hold lands subject to a trust; or; in other words, that such a corporation may be a trustee, although it was long held otherwise for technical reasons. But whenever a corporation can be a trustee, it must be subject to all the duties, and has no greater power, but generally much less, than a natural person. It is believed there will be found no exception to this rule.

Can a trustee, then, come into court and ask that a contract made by him in violation of his trust in confederacy with the defendant to injure his *cestui que trusts*, whoever they may be, and ask the interposition of a court of equity to set that contract aside?

Will a court of equity, after finding such a confederacy and combination for such fraudulent purpose between the complainant and the defendant, as has been done in this case, give relief in favor of one party as against the other, of one tortfeasor as against the other? Will a court in equity adjudicate such questions between wrong-doers?

Must not the party complainant come into court with clean hands? Can he be heard alleging his own wrong-doing as a reason why a court of equity should interpose in his behalf? Lord Mansfield, when asked to decide upon the rights between the parties to an illegal contract, said that the court would as soon sit to make an equitable division of plunder between two highwaymen.

It is but just to the County of Adams to call attention to the fact that, as complainant, it has made no such allegation, and claims no relief upon any such ground, nor has it asked the court to adjudge any such complicity in wrong-doing against itself; but the court upon its own motion has made the allegation, found the evidence against

the County, and adjudicated upon the allegations so made and evidence so found, that the County is guilty of "scheming," "plotting," "confederating," "subverting trusts," and "diverting trust funds," and "making corrupt disposition of its lands," and thereupon they give relief to the County, unasked, for so doing.

If the law of the State of Iowa did, in fact, "introduce a scheme subversive of the trust imposed upon the State in the act of Congress," (*Decision, p.* 4;) if the evident "effect of the law was to devote the lands to purposes widely different from those which the original grant was intended to secure;" if it "threw them open to the cupidity of speculators and land monopolists," (*Ibid*, 4;) if all that was done by the parties in this case does not prevent the stamp of illegality from being impressed upon a deliberate scheme of spoliation of the trust fund, conceived in the form of law and carried out with entire disregard of public obligation, (*Ibid*, *p.* 4,) then it would seem to be clear that the State of Iowa, as a *cestui que trust*, has nothing to complain of in this transaction, because she aided her trustee, the County of Adams, by enacting these most unwholesome laws in this behalf in aid of schemes of fraud and villainy, and empowered the County to do all that was done. Then the County, not being deceived or defrauded by the appellant, made the contract complained of, thereby contributing, in direct "confederacy" with the appellant, to accomplish the "scheme." All this being true, except that the appellant seems to have taken only a passive part in the transaction, still the appellant agrees that such a contract would be void against the policy of the act of Congress.

But if so, who is to complain in a court of equity? Certainly not the State of Iowa, because she is found to have prostituted her legislative power to promote this

scheme of fraud, breach of trust, unlawful design, and misapplication of public funds. Certainly not the County of Adams, because, acting in regard to lands upon which certain public trusts are imposed, she is the willing and active instrument of the State of Iowa in doing all these wrongs as the decision finds for the purpose of carrying out the authorized scheme referred to, to apply the proceeds of the contract to objects entirely foreign to those prescribed by the act of Congress.

The decision finds that the apparently least guilty of all these parties, the appellant, can take no advantage of this transaction and of this contract. How, then, can the most guilty party, the County of Adams, whose officers did it, and whose people confirmed their action after full notice, and received the money and spent it? The United States may well complain; and upon a proper case by a proper bill, through the Attorney-General as *parens patriæ*, and the proper facts appearing therein, and put in issue and proven, the court may well fulminate its thunders against this nefarious "scheme" to defeat the wise purpose of an act of Congress; but not here, and now, in favor of the County of Adams, who did it.

The Case Made by the Bill has not the Proper Averments to Raise the Questions Decided.

If it were possible that the County of Adams could be heard in court upon this question, then it is respectfully submitted that it must be upon other and entirely different allegations from those in the bill.

The bill should allege the contract and the deed following it; and then it should allege that it was necessary or advantageous to the people of the United States, the State of Iowa, or the County of Adams, that these lands should be drained. It appears in the record (p. 240) that, under

the designation of "swamp lands," the General Land Office includes all lands too wet to be arable; that is, on which crops cannot be raised by the ordinary use of the plow. Now, all these swamp lands included in the decision, for aught that appears, may be better used as meadows than as arable lands without draining, and for the raising of grasses, cranberries, water plants, such as willows for basket making; and that no prudent, husband-like owner would drain them; and in such case it would seem not subversive of the public good not to have them drained. Take a rice plantation for example. It would be simply ruinous to have the lands drained, and it would be worse than useless for the United States, or anybody else, to drain them. That the lands required draining should appear in the supposed bill, as it does not in this bill; but on the contrary, it appears that the lands had not been drained at all, and yet fifteen hundred acres out of the two thousand have been sold to actual *bona fide* settlers, who make no complaint that they were not drained. That it was proper that the lands might remain undrained, if deemed best, appears from the opinion, which finds (page 4) that "the State or county could certainly sell the lands to a purchaser 'out and out,' freed from any lien or trust in relation to the improvements which they were intended to secure." True, they could do that, and that is exactly what they did do. Then again, the County of Adams, in their bill, should have alleged that the proceeds to be received by them from the contracts were necessary for the purpose of draining these lands, because the proviso of the act of Congress (*Decision*, p. 3) is "that the proceeds of said land shall be applied exclusively, as *far as necessary*, to the purpose of reclaiming said lands by means of levees and drains aforesaid."

Now it appears in the record (pp. 21, 22) that the County of Adams had received the entire proceeds—how much is

not stated—of thirty-four tracts of land, amounting to sixteen hundred acres, before they made the contract which is complained of with the appellant. Might they not have received money enough, all that was "necessary," to do this reclamation? If so, then they might sell the rest "out and out," and devote the proceeds according to their own good pleasure, without acting contrary to the policy of the act of Congress.

It is respectfully submitted that all these are necessary averments to raise the questions decided by the court, and must be set forth by the county in making its complaint to set aside this contract, and are traversable, and may be negatived by proof, so that the court would find that the swamp lands of Adams county either did not require draining or were sufficiently drained, or, at worst, a fund sufficient to do it had been accumulated from the proceeds of these swamp lands; either of which being found would seem to give the right in the County of Adams to sell its remaining lands "out and out, freed from any lien or trust "in relation to improvements," and, as the opinion finds, "the public authorities might even waste or misapply the fund without any legal remedy to prevent it," which last proposition the appellant craves leave to doubt. And such bill, also, should tender and offer to bring into court for the use of the defendant the moneys paid by him as consideration for such deed, or in carrying out said transaction. It is a very old rule of law as well as of equity that no one "can have his cake and eat it too."

Before a Trust-Deed can be Set Aside the Trustee Must be Made a Party to the Bill.

But suppose that all the averments were made in the bill which we have set out as necessary; or suppose that this court should hold the present bill sufficient in its aver-

ments, then it would seem that before a deed can be set aside it is necessary to bring the parties who receive it, and claim under it, into court to show cause why such a decree should not be made.

The trustees to whom the land was conveyed are not made parties in the present bill. The lands were conveyed by quit-claim to three persons by name as trustees, and in trust for the appellant. This deed not being an enfoeffment, within the statute of uses, would convey title to the trustees. This deed is a quit-claim, and contains no *habendum et tenendum* clause. And as the deed (*Rec., p.* 46) holds the parties of the second part, the trustees, to "take this grant subject to all the provisions of the act of Congress of September 28, 1850, and expressly releases the State of Iowa and said county from all liability for reclaiming said lands," it is thereby sufficiently shown that the trustees have certain obligations, and have not a naked trust like a mere agency. Indeed, the effect of this provision of the deed is a covenant on their part to indemnify and save harmless the State of Iowa and the vendor from all obligation to reclaim the land. And the appellant at this point, not desiring to controvert it, is confirmed in this by the decision of the court "that it is probable that the legislature meant that the purchaser should indemnify the State and county from their liability" by the use of the word "release."

While fully acquiescing in that decision, the appellant ventures to say that, as they understood it, the effect of this release was as follows: If they had bargained for the land of the county without covenant in that behalf, the trustees might turn round immediately after receiving the deed and call upon the county to reclaim the lands under the trust which the court here decides is imposed upon the State and county, although they took the lands under the

understanding that they would not call for their reclamation. To prevent that, a clause was inserted in the deed following the law that the trustees would release the county and State from any liability to reclaim said lands on the part of the appellant, the appellant innocently supposing that if they, and those who claimed under them, knowing their contract, did not complain that the lands were not reclaimed, nobody else could, except, perhaps, the United States, looking to the general health of all the people of the United States.

Now, then, it is believed by the appellant that it is a rule without exception, for which authority may be found everywhere, that before a deed can be set aside in a court of equity for any cause of illegality, the parties to the deed holding the title must be brought before the court.

To that view we cite a late work—

"*Perry on Trusts*," *second edition*, *sections* 873, 874, and the authorities there cited.

Also,

1 *Daniels' Chancery Practice*, *fourth edition*, *page* 246, *chapter* 5, *sec.* 2.

"Although the trustees have no active duties to discharge in the management of the trust estate, and although the question at issue in the cause is to be fought principally by the *cestui que trust*, the trustees must, notwithstanding, be brought before the court as co-defendants in respect to the legal estate vested in them, and a suit against the *cestui que trust* only will be defective."

Hill on Trusts, *4th American edition*, p. 545.

"Trustees have a legal interest, and therefore they are necessary parties."

Story's Equity Pleading, *sec.* 207.

While a party suing as trustees is not always bound to

bring in the *cestui que trusts*, because the trustees are supposed to have been appointed for the very purpose of taking care of them, the rule is never *e converso*. All parties whose interests are to be affected must be brought before the court. There are some cases where parties are not within the jurisdiction, and therefore cannot be brought before the court; and the court, in exercising its discretion, may proceed with the case so far as it can do without such parties, but its adjudication can never bind the party who is not before the court, for whatsoever reason.

The legal title in these lands stands in the trustees. Suppose the trustees should sell each and all the remaining lands to a *bona fide* purchaser. If such purchaser is not now affected by record notice of all that has happened, and by his being obliged to know the law, as the court says he is not so affected, then any purchaser, without actual notice from the trustees, would hold these lands, because no man is affected with notice given by a *lis pendens* where the cause is not pending against the party with whom he is dealing.

The appellant believes that he has given sufficient reasons why at least he should be heard upon these questions, as he never has been, before they are decided against him.

They were not raised by the pleadings.

They were not passed upon by the court below.

They have never been brought to his attention.

They have never been argued by him or those appearing for him.

He has been held to be culpably guilty of acting in confederacy with the complainant in endeavoring to impose upon the public and subvert public interests; without any charge against him to that effect before the court; without

any opportunity to meet that charge, so far as it involves a question of fact, by proof; without even the opportunity, in that most solemn form of averment which the law permits to the appellant, to deny all such guilty knowledge, intention, design, or confederacy.

The appellant is emboldened further to press this court for a rehearing of this cause, because in numerous cases brought by different plaintiffs upon contracts precisely similar in kind and degree for swamp-lands in the State of Iowa the supreme court of the State has with unvarying uniformity decided the questions of property involved in those suits, sustaining the legality of like contracts and deeds of like lands made under the same circumstances and under the same statutes of the State, and with precisely similar provisions; all of which judgments of the supreme court of Iowa in a matter of property in that State would be in fact reversed, though not in form, by the opinion and adjudication of the Supreme Court in the cause at bar; and the appellant has always been advised and believes that it is the rule of the Supreme Court of the United States to follow the decisions of the supreme court of a State in regard to their local laws upon questions of property affecting titles to lands in that State.

It is true that in the cases referred to the question was not raised whether the law of the State of Iowa did not "introduce a scheme subversive of the trust imposed upon the State by the act of Congress," but the strongest affirmance of that statute is the fact that it passed so many times under the review of the supreme court of the State, *consensu omnium*, unquestioned as to its validity and the propriety of its legal effect.

For a memorandum of the decisions in the cases referred to, and the substance of those cases, the appellant begs

leave to furnish the pamphlet entitled "Decisions of the Supreme Court of Iowa Touching Swamp Land Titles," which is filed with this motion.

The trustees to whom the land was conveyed are as honorable, patriotic, right-minded, good citizens of the United States as any therein, and do not feel content without exhausting every known means, to allow the charge against them as schemers for wrong-doing, for subversion of the public interests, and confederacy in misapplication of public funds, to stand perpetually recorded in the reports of the decisions of the Supreme Court of the United States in a cause in which they were not parties, and not commanded or permitted to appear, and in which they were not heard by proof or argument. If need be they must submit to the blow, but do say, "Strike, but hear."

These grave consequences, and not the amount of property in dispute—scarcely enough to justify an appeal to this court—has prompted this renewed application.

These so weighty considerations are not the only grave consequences that may flow from this decision, unreversed, which declares that the laws of a State allowing counties to dispose of the swamp lands granted by the United States to the States, and expend some portion of the consideration received therefor at will, containing a provision that the purchaser shall release the State or county from the obligation of reclaiming the lands, whether those lands need reclaiming or not; whether they have been in fact reclaimed or not, or whether a fund has been accumulated and set apart sufficient to reclaim them or not, a fund accrued by a sale of a portion of them was a *scheme, ex vi termini*, "subversive of the trust, repugnant to the express stipulation of the act of Congress, and was calculated to facilitate and encourage a wasteful and corrupt disposition of the lands."

The act of Congress of 1850, with its amendments, applies to all the overflowed or swamp lands in the several States, and there has been much legislation about the disposition of these lands. Some in consonance with that of the State of Iowa, some different, and some much more open to objection than that of Iowa, all of which are characterized in terms so severe by the court that it must of necessity raise doubts upon titles, encourage a crop of litigation, the fruits of which must be very disastrous.

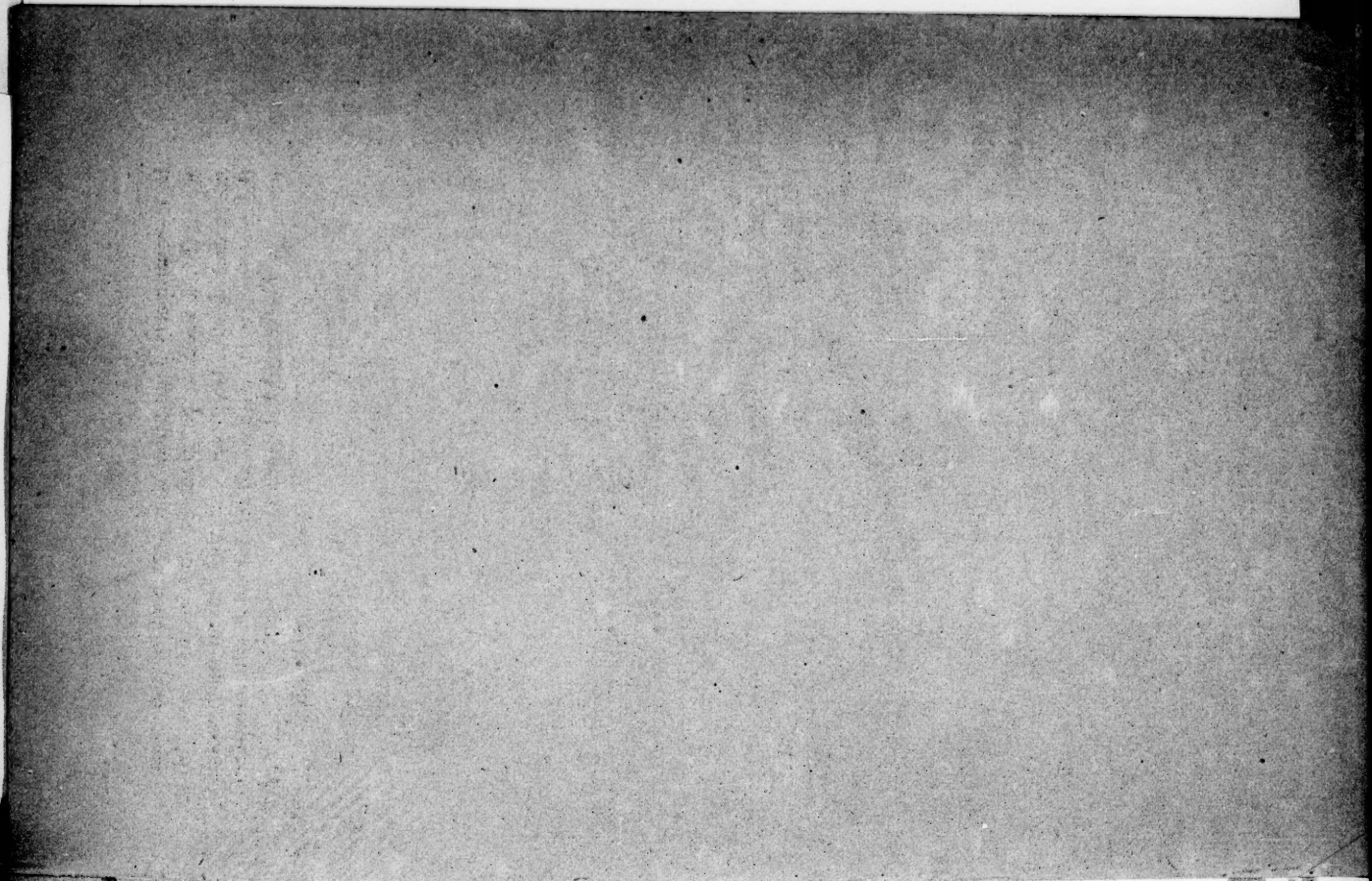
It may be replied to this that the opinion of the court excepts lands acquired by *bona fide* purchasers without notice. Who are *bona fide* purchasers without notice? All men must be presumed to know the law. The contract and deed under which the appellant and others own these lands are recorded. The purchasers know the law and are informed of the contents of these deeds, and they take them with a knowledge that the law under which they are founded, in the language of the Supreme Court, is "a scheme for corruption and subversion of trusts."

In the present case how there could be any purchaser of those lands, a *bona fide* purchaser without notice, assuming that the purchase of the company was against law, it seems impossible to say. The deed to the trustees was recorded, and it is set forth in the body of the deed, where the contract under which it was made was recorded, so that the whole corrupt scheme was on record either in the statute-books of the State or the records of the county wherein the land lay. And if ever a purchaser is expected to be affected with notice of an illegal and corrupt transaction, such record notice has always heretofore been held sufficient.

The appellant has not argued many propositions in the opinion of the court, because it is believed that that could

be more properly done upon a re-argument of the cause which it is desired to be granted; and, in that case, full consideration will be given, and the ground upon which the decision stands discussed, accompanied with citations of authorities in support thereof.

BENJ. F. BUTLER,
O. D. BARRETT,
Counsel for Appellant.



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1878.—No. 85.

THE AMERICAN EMIGRANT CO., *Appellant.*
vs.
ADAMS COUNTY, IOWA.

The appellant moves the court for a re-argument of this cause, for that:—

1. The decision rests upon the ground that the Act of the Iowa Legislature of March 22, 1858, is "subversive of the trust imposed upon the State by the Act of Congress," for the reason (opinion page 5,) that the "intent of the law was to relieve the State and county of every obligation and duty, and to throw them *pro forma* on to the purchaser of the land."

2. The contract in this case was not made under the Act of 1858, but under the Act of the Legislature of Iowa of April 5th, 1862,—the contract having been made September 3d, 1862. This Act expressly provides that the county shall not be released from the duty to reclaim the land as contemplated by the Act of Congress, and of the State Legislature of January 13, 1853, which the court say, "was a fair and lawful effort to fulfill" the trust. It is an amendment of the first section of the Act of 1858, and concludes as follows: "*Provided, always,* That no county is hereby released from its obligation to make the necessary drains and leaves contemplated by the Act of Congress, *and the Act of the General Assembly of this State passed January 13th,* 1853." If after this amendment, the obnoxious clause in section 3 of the Act of 1858, stands, its only effect can be to put the duty upon the purchaser to drain

the lands also—a double security for the fulfillment of the trust. This proviso fully re-instated all the provisions of the Act of 1853, for draining the lands in *express terms*, and bound the counties to their performance; and this court (opinion p. 4,) commends this Act of 1853, as "perhaps the most convenient and practicable mode of carrying out the intention of Congress."

3. Counsel for the county attacked the Act of 1858 as subversive of the trust, in argument only (no such ground having been laid in the bill), and Mr. Harvey in his brief defended it. The Act of 1862, was not printed or referred to in the brief for the county, or in the brief of Mr. Harvey for Appellant. It was printed without comment in the brief of Mr. Hubbard, but was not mentioned on the oral argument by anybody. This omission to argue the effect of the Act of 1862, was an oversight, caused mainly, perhaps, by a firm belief that the Act of 1858 was valid. If the effect of this Act of 1862 had been argued or considered by the court, we should not ask for a re-argument. But as the case has wholly turned upon the void character of the Act of 1858, as subversive of the trust reposed in the State by the Act of Congress, and as the amendment of 1862, manifestly avoids the precise ground of its illegality, a re-argument is respectfully asked.

For convenience we print the Act of 1858, and the Act of 1862, herewith.

J. A. Harvey and
N. M. Hubbard,
Solicitors for the Appellant.

"REV. 1860, P. 159, ART. 11.

AN ACT to enable the counties to use the swamp lands to aid in the construction of railroads and seminary buildings. Passed March 22, 1858. Took effect April 21, 1858.

SEC. 1. (Rev. 986.) *Be it enacted by the General Assembly of the State of Iowa*, That it shall be competent and lawful for the counties owning swamp and overflowed lands to devote the same or the proceeds thereof, either in whole or in part, to the erection of public buildings for the purposes of education, the building of bridges, roads and highways, for building institutions of learning, or for making railroads through the county or counties to whom such lands belong: *Provided*, That before any of said lands or the proceeds thereof shall be so devoted to any of the purposes aforesaid, the question whether the same shall be so done shall be submitted at some general or special election to the people of the county.

SEC. 2. (Rev. 987.) The proper officer or officers of any county may contract with any person or company for the transfer and conveyance of any swamp or overflowed lands, or the proceeds thereof, or otherwise appropriate the same to such person or company, or to their use, for the purpose of aiding or carrying out any of the objects mentioned in the first section of this act, which said contract shall be reduced to writing and signed by the respective parties or their lawful, authorized agents.

SEC. 3 (Rev. 988,) requires that such contract must be published four weeks before the election, and provides that the person or company contracting must take such swamp lands subject to all the provisions of the act of Congress of September 28, 1850, and shall expressly release the State and county from reclaiming the lands."

"ACT OF GENERAL ASSEMBLY, (1862,) CHAP. 77, P. 78.

AN ACT to amend section 986 of the Revision of 1860, in relation to swamp lands.

SEC. 1. *Be it enacted by the General Assembly of the State of Iowa*, That section nine hundred and eighty-six of the Revision of 1860, be so amended as to read as follows: That it shall be competent and lawful for the counties owning swamp and overflowed lands to devote the same or the proceeds thereof, either in whole or in part, to the erection of public buildings for purposes of education, the building of bridges, roads and highways, for building institutions of learning, or for a permanent school fund for the use of the county to which such lands belong, or for building county buildings, or for making railroads through the county or counties to which such lands belong: *Provided*, That before any of said lands, or the proceeds thereof, shall be so devoted to any of the purposes aforesaid the question whether the same shall be so done shall be submitted at some general or special election to the people of the county: *Provided always*, That no county is hereby released from its obligation to make the necessary drains and levees contemplated by the act of Congress passed September 28th, 1850, and the act of the General Assembly of this State, passed January 13th, 1853."

(This act took effect April 5, 1862.)

1879
10-61

Supreme Court of the United States.

OCTOBER TERM—1879.

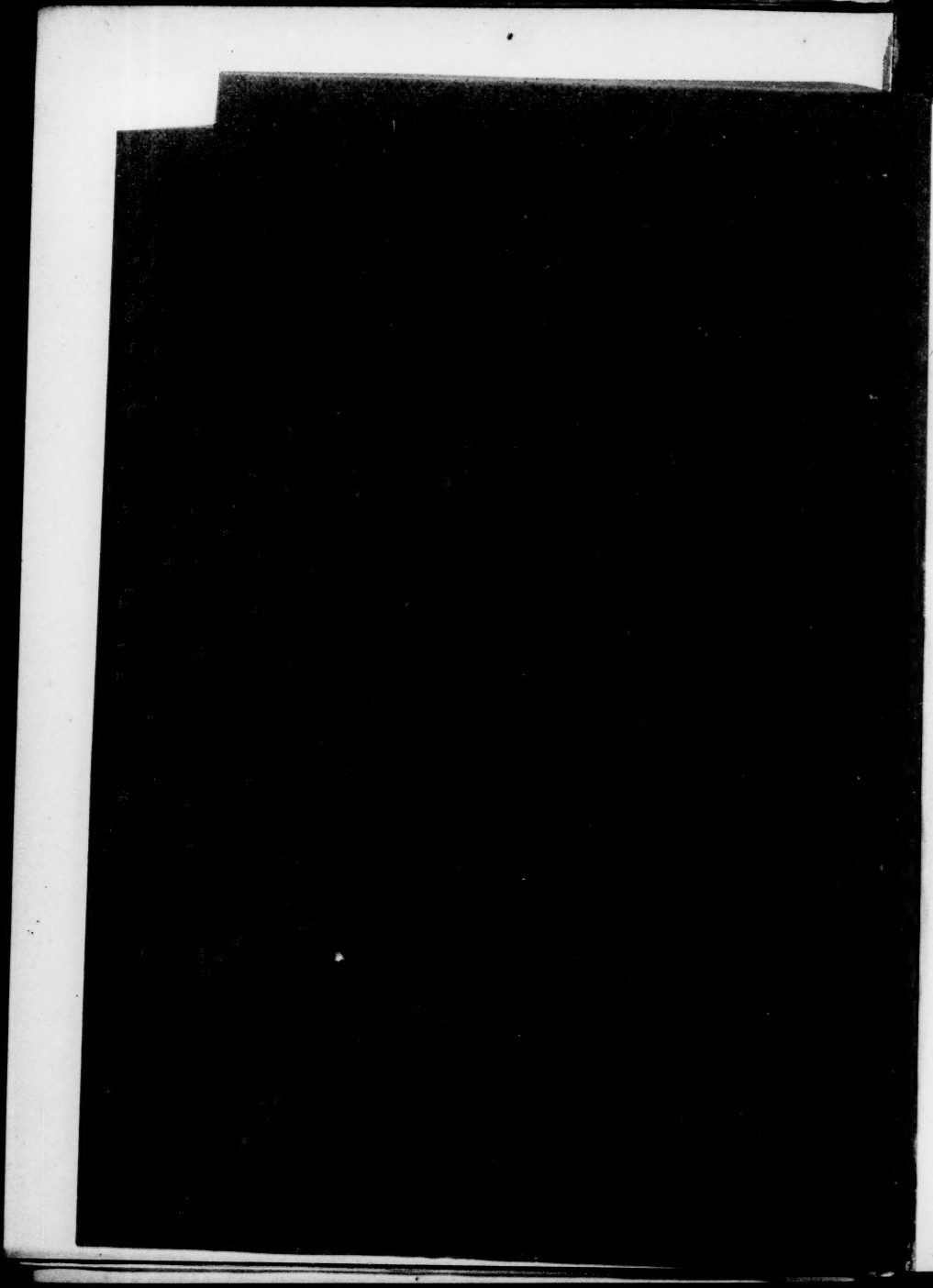
AMERICAN EMIGRANT COMPANY,
APPELLANT,
vs.
COUNTY OF ADAMS, APPELLEE.

No. 16

Appellant's Brief Submitted on Reargument.

BENJ. F. BUTLER,
O. D. BARRETT,
Counsel.

WASHINGTON, D. C.
GIBSON BROTHERS, PRINTERS.
1879.



Supreme Court of the United States.

October Term, 1879.

THE AMERICAN EMIGRANT COMPANY,
APPELLANT,

vs.

THE COUNTY OF ADAMS, APPELLEE.

No.

BRIEF SUBMITTED ON REARGUMENT ON BEHALF OF APPELLANT.

FIRST, AS TO THE PARTIES.

This is a bill in equity brought by Adams County, Iowa, complainant, against the appellant, described to be "a private corporation or partnership of the city of Hartford, a citizen of the State of Connecticut." (Record, p. 37, amended bill.)

The appellant is the only party defendant.

The bill alleges that a certain contract concerning lands called "swamp lands," and certain indemnities and securities to accrue from the United States to the complainant, were obtained from the complainant by fraud and misrep-

resentation of the defendants, made to the officers and people of said county. It also alleges that a certain deed of indenture of said lands, set forth as Exhibit "B," (*Record, p.* 45,) made the seventh day of September, A. D. 1863, "between the COUNTY OF ADAMS, in the State of Iowa, of the first part, and ANDREW G. HAMMOND, JOHN HOOKER, and H. K. W. WELSH, all of the city of Hartford and State of Connecticut, trustees, and in trust for the American Emigrant Company, of the second part: *Witnesseth*, That said county, * * * in consideration of the sum of two thousand dollars to said party of the first part paid by said company, the said party of the first part doth hereby sell, assign, transfer, and quit claim to the PARTIES OF THE SECOND PART AS SUCH TRUSTEES AS AFORESAID, all and singular the lands and real estate hereinafter mentioned and described," being the *locus de quo*, is void, because the vendor was deceived and defrauded by false representations to obtain the same, and because the lands were illegally sold in this, that the price per acre was less than one dollar and twenty-five cents, that being the rate fixed by the law of the State of Iowa for such lands; and also that said deed should be set aside because the delivery thereof was obtained by fraud and collusion with the clerk of said county, *it* having been placed in *escrow*, and because no mortgage had been given back upon said lands to secure the payment of the purchase money.

The bill also alleges as cause for setting aside the contract and deed, the inadequacy of the consideration and non-fulfilment of the terms of the contract by the appellant.

The bill also prays an account of the money received by the appellant for the sale of said lands, as well as for said indemnity securities from the United States; and also prays that in case the contract should not be rescinded,

judgment should be given for two thousand seven hundred dollars, and interest in favor of complainant.

But the bill nowhere offers or tenders a return of the consideration money received for said deed, nor the money expended by the appellant on account of, and in part execution of, said contract.

THE ANSWER DENIES, SPECIFICALLY,

each and every allegation of deceit or fraud, and denies any collusive combination with said county clerk in receiving the deed, and alleges that the consideration was paid in money at the time of the delivery of the deed, so that no mortgage was required to secure the same, and avers the payment of large sums of money, amounting, as is shown by the testimony and found by the decision of this court, to more than six thousand dollars by the appellant in behalf of the complainant in carrying out the transaction; and avers that both deed and contract were submitted in due form for the ratification of the people of the county at an election duly called for that purpose, and were duly ratified by a majority of the people of the county voting thereon; and that there had been sold of said two thousand acres of land more than fifteen hundred acres to actual *bona fide* white settlers in execution of said contract.

The judgment in the court below sets aside both the contract and the DEED, because of their being obtained by false representations and deceit, and for no other reason whatever, and orders a rescission of the contract, and that the deed be set aside for that cause alone, and orders an accounting between the parties, and refers the case to a master to state the account.

This court in its decision at the last term did not sustain the finding of the court below upon the grounds of fraud and misrepresentation, or upon the ground of inadequate consideration, or upon the ground that the lands were sold for less than one dollar and twenty-five cents per acre against the laws of Iowa, as on the latter point this court might well do, because the contract which subsequently terminated in a deed was not for the sale exclusively of lands to which the county had the title, but included lands to which by possibility the appellants, by expenditure of time and money, might acquire title from the United States.

Assuming the decision to this extent correct, we may dismiss all the allegations of the bill charging fraud, deceit, and illegality in the contract and *deed*, because they have been negatived by the decision of this court, which proceeds to dispose of the case, and afford relief to the party by affirming the decree of the court below upon grounds not passed upon by that court, nor set forth in the bill, nor upon which the complainant asks relief, and upon grounds which it is respectfully submitted the complainant could not have the interposition of a court of equity in his behalf had he prayed for it, being found by *the decision of this court to have been "a confederate with the defendant in committing a spoliation of a trust fund," and "contributing" to the unlawful design and "scheme," because of which the court sets aside that very transaction.*

Striking out, therefore, as the decision of this court does, all the charges in the bill and the replies thereto in the answer pertaining to the frauds and deceits claimed, the illegality and inadequacy of consideration and non-performance of contract, which last could not affect the deed, and only the contract as an executory one, we then have a bill simply alleging a contract by the complainant to sell

land to the appellants, and a deed transferring and quit-claiming certain lands to certain persons named as trustees for the appellant upon certain conditions to be performed by said trustees, to wit, that they will do all that the State of Iowa ought to do, and the United States required to be done, in draining and reclaiming said lands, and an answer that the contract, which had been duly executed by the officers and ratified by the people of the county, had been sufficiently performed, and that the deed had been duly executed to the parties of the second part as trustees, as alleged, and the consideration money paid; and, under the decision of this court, no evidence disturbing these allegations of the answer is found.

Upon this state of the pleadings what can be done by a court in equity? No stress is here put upon the want of prayer for relief in this behalf, because the prayer for general relief covers all prayers, being, as it was said by an old equity pleader, the next best prayer to the Lord's Prayer. Still, under the prayer for general relief this court has frequently held that relief can only be granted upon the grounds and charges set up in the bill. Can the court, upon this state of the pleadings, raise for itself reasons for a decree not set up in the bill, and decide the contract void, and set aside the deed on the ground of collusive confederation under the forms of law by the complainant, and the State of Iowa through its legislative action and the defendant, to defraud the United States?

It is respectfully submitted that so to do is not within the proper action of a court of equity under the circumstances of this case:

Entitled to relief on the one side, and competent to defend and be decreed to give relief on the other.

The complainant, the County of Adams, is bound by the decision of the court to have held this land subject to a trust imposed upon it by the statutes of the United States. It is not now doubted that a municipal corporation, within the scope of its power, can take and hold lands subject to a trust; or, in other words, that such a corporation may be a trustee, although it was long held otherwise for technical reasons. But whenever a corporation can be a trustee, it must be subject to all the duties, and has no greater power, but generally much less, than a natural person. It is believed there will be found no exception to this rule.

Can a trustee have the interposition of a court of equity to set aside a contract made by him in violation of his trust and in confederacy with the defendant to injure his *cestui que trusts*, whoever they may be?

Will a court of equity, after finding such a confederacy and combination for such fraudulent purpose between the complainant and the defendant, as has been done in this case, give relief in favor of one party as against the other, of one tortfeasor as against the other? Will a court in equity adjudicate such questions between wrong-doers?

Must not the party complainant come into court with clean hands? Can he be heard alleging his own wrong-doing as a reason why a court of equity should interpose in his behalf? Lord Mansfield, when asked to decide upon the rights between the parties to an illegal contract, said that the court would as soon sit to make an equitable division of plunder between two highwaymen.

It is but just to the County of Adams to call attention to the fact that, as complainant, it has made no such allegation, and claims no relief upon any such ground, nor has it asked the court to adjudge any such complicity in wrong-doing against itself; but the court upon its own motion has made the allegation, found the evidence against the County, and adjudicated upon the allegations so made and evidence so found, that the County is guilty of "scheming," "plotting," "confederating," "subverting trusts," and "diverting trust funds," and "making corrupt disposition of its lands," and thereupon they give relief to the County, unasked, for so doing.

If the law of the State of Iowa did, in fact, "introduce a scheme subversive of the trust imposed upon the State in the act of Congress," (*Decision, p.* 4;) if the evident "effect of the law was to devote the lands to purposes widely different from those which the original grant was intended to secure;" if it "threw them open to the cupidity of speculators and land monopolists," (*Ibid*, 4;) if all that was done by the parties in this case does not prevent the stamp of illegality from being impressed upon a deliberate scheme of spoliation of the trust fund, conceived in the form of law and carried out with entire disregard of public obligation, (*Ibid*, *p.* 4,) then it would seem to be clear that the State of Iowa, as a *cestui que trust*, has nothing to complain of in this transaction, because she aided her trustee, the County of Adams, by enacting these most unwholesome laws in this behalf in aid of schemes of fraud and villainy, and empowered the County to do all that was done. Then the County, not being deceived or defrauded by the appellant, made the contract complained of, thereby contributing, in direct "confederacy" with the appellant, to accomplish the "scheme." All this being true,

except that the appellant seems to have taken only a passive part in the transaction, still the appellant agrees that such a contract would be void against the policy of the act of Congress.

But if so, who is to complain in a court of equity? Certainly not the State of Iowa, because she is found to have prostituted her legislative power to promote this scheme of fraud, breach of trust, unlawful design, and misapplication of public funds. Certainly not the County of Adams, because, acting in regard to lands upon which certain public trusts are imposed, she is the willing and active instrument of the State of Iowa in doing all these wrongs as the decision finds for the purpose of carrying out the authorized scheme referred to, to apply the proceeds of the contract to objects entirely foreign to those prescribed by the act of Congress.

The decision finds that the apparently least guilty of all these parties, the appellant, can take no advantage of this transaction and of this contract. How, then, can the most guilty party, the County of Adams, whose officers did it, and whose people confirmed their action after full notice, and received the money and spent it? The United States may well complain; and upon a proper case by a proper bill, through the Attorney-General as *parens patriæ*, and the proper facts appearing therein, and put in issue and proven, the court may well fulminate its thunders against this nefarious "scheme" to defeat the wise purpose of an act of Congress; but not here, and now, in favor of the County of Adams, who did it.

THE CASE MADE BY THE BILL HAS NOT THE PROPER AVERMENTS TO RAISE THE QUESTIONS DECIDED.

If it were possible that the County of Adams could be heard in court upon this question, then it is respectfully submitted that it must be upon other and entirely different allegations from those in the bill.

The bill should allege the contract and the deed following it; and then it should allege that it was necessary or advantageous to the people of the United States, the State of Iowa, or the County of Adams, that these lands should be drained. It appears in the record (p. 240) that, under the designation of "swamp lands," the General Land Office includes all lands too wet to be arable; that is, on which crops cannot be raised by the ordinary use of the plow. Now, all these swamp lands included in the decision, for aught that appears, may be better used as meadows than as arable lands without draining, and for the raising of grasses, cranberries, water plants, such as willows for basket making; and that no prudent, husband-like owner would drain them; and in such case it would seem not subversive of the public good not to have them drained. Take a rice plantation for example. It would be simply ruinous to have the lands drained, and it would be worse than useless for the United States, or anybody else, to drain them. That the lands required draining should appear in the supposed bill, as it does not in this bill; but on the contrary, it appears that the lands had not been drained at all, and yet fifteen hundred acres out of the two thousand have been sold to actual *bona fide* settlers, who make no complaint that they were not drained. That it was proper that the lands might remain undrained, if deemed best, appears from the opinion, which finds (page 4) that "the State or county could certainly sell the lands to a purchaser 'out and out,' freed from

any lien or trust in relation to the improvements which they were intended to secure." True, they could do that, and that is exactly what they did do. Then again, the County of Adams, in their bill, should have alleged that the proceeds to be received by them from the contracts were necessary for the purpose of draining these lands, because the proviso of the act of Congress (*Decision*, p. 3) is "that the proceeds of said land shall be applied exclusively, as *far as necessary*, to the purpose of reclaiming said lands by means of levees and drains aforesaid."

Now it appears in the record (pp. 21, 22) that the County of Adams had received the entire proceeds—how much is not stated—of thirty-four tracts of land, amounting to sixteen hundred acres, before they made the contract which is complained of with the appellant. Might they not have received money enough, all that was "necessary," to do this reclamation? If so, then they might sell the rest "out and out," and devote the proceeds according to their own good pleasure, without acting contrary to the policy of the act of Congress.

It is respectfully submitted that all these are necessary averments to raise the questions decided by the court, and must be set forth by the county in making its complaint to set aside this contract, and are traversable, and may be negatived by proof, so that the court would find that the swamp lands of Adams county either did not require draining or were sufficiently drained, or, at worst, a fund sufficient to do it had been accumulated from the proceeds of these swamp lands; either of which being found would seem to give the right in the County of Adams to sell its remaining lands "out and out, freed from any lien or trust "in relation to improvements," and, as the opinion finds, "the public authorities might even waste or misapply the

fund without any legal remedy to prevent it," which last proposition the appellant craves leave to doubt. And such bill, also, should tender and offer to bring into court for the use of the defendant the moneys paid by him as consideration for such deed, or in carrying out said transaction. It is a very old rule of law as well as of equity that no one "can have his cake and eat it too."

Before a Trust-Deed can be Set Aside the Trustee Must be Made a Party to the Bill.

But suppose that all the averments were made in the bill which we have set out as necessary; or suppose that this court should hold the present bill sufficient in its averments, then it would seem that before a deed can be set aside it is necessary to bring the parties who receive it, and claim under it, into court to show cause why such a decree should not be made.

The trustees to whom the land was conveyed are not made parties in the present bill. The lands were conveyed by quit-claim to three persons by name as trustees, and in trust for the appellant. This deed not being an enfoeffment, within the statute of uses, would convey title to the trustees. This deed is a quit-claim, and contains no *habendum et tenendum* clause. And as the deed (*Rec., p.* 46) holds the parties of the second part, the trustees, to "take this grant subject to all the provisions of the act of Congress of September 28, 1850, and expressly releases the State of Iowa and said county from all liability for reclaiming said lands," it is thereby sufficiently shown that the trustees have certain obligations, and have not a naked trust like a mere agency. Indeed, the effect of this

provision of the deed is a covenant on their part to indemnify and save harmless the State of Iowa and the vendor from all obligation to reclaim the land. And the appellant at this point, not desiring to controvert it, is confirmed in this by the decision of the court "that it is probable that the legislature meant that the purchaser should indemnify the State and county from their liability" by the use of the word "release."

While fully acquiescing in that decision, the appellants venture to say that, as they understood it, the effect of this release was as follows: If they had bargained for the land of the county without covenant in that behalf, the trustees might turn round immediately after receiving the deed and call upon the county to reclaim the lands under the trust which the court here decides is imposed upon the State and county. To prevent that, a clause was inserted in the deed, following the law, that the trustees would release the county and State from any liability to reclaim said lands on the part of the appellant, the appellant innocently supposing that if they, and those who claimed under them, knowing their contract, did not complain that the lands were not reclaimed, nobody else could, except, perhaps, the United States, looking to the general health of all the people of the United States.

Now, then, it is believed by the appellant that it is a rule without exception, for which authority may be found everywhere, that before a deed can be set aside in a court of equity for any cause of illegality, the parties to the deed *holding the title* must be brought before the court.

To that view we cite a late work—

"*Perry on Trusts*," *second edition*, *sections* 873, 874, and the authorities there cited.

Also,

1 *Daniels' Chancery Practice, fourth edition, page* 246, *chapter* 5, *sec.* 2.

"Although the trustees have no active duties to dis-
" charge in the management of the trust estate, and
" although the question at issue in the cause is to be
" fought principally by the *cestui que trust*, the trustees
" must, notwithstanding, be brought before the court as
" co-defendants in respect to the legal estate vested in
" them, and a suit against the *cestui que trust* only will
" be defective."

Hill on Trusts, 4th American edition, p. 545.

"Trustees have a legal interest, and therefore they are
" necessary parties."

Story's Equity Pleading, sec. 207.

While a party suing as trustees is not always bound to bring in the *cestui que trusts*, because the trustees are supposed to have been appointed for the very purpose of taking care of them, the rule is never *e converso*. All parties whose interests are to be affected must be brought before the court. There are some cases where parties are not within the jurisdiction, and therefore cannot be brought before the court; and the court, in exercising its discretion, may proceed with the case so far as it can do without such parties, but its adjudication can never bind the party who is not before the court, for whatsoever reason.

The legal title in these lands stands in the trustees. Suppose the trustees should sell each and all the remaining lands to a *bona fide* purchaser. If such purchaser is not now affected by record notice of all that has happened, and by his being obliged to know the law, as the court says he is not so affected, then any purchaser, without actual notice from the trustees, would hold these lands, because no man is affected with notice given by a *lis*

pendens where the cause is not pending against the party with whom he is dealing.

By the decision in this case the appellant has been held to be culpably guilty of acting in confederacy with the complainant in endeavoring to impose upon the public and subvert public interests; without any charge against him to that effect before the court; without any opportunity to meet that charge, so far as it involves a question of fact, by proof; without even the opportunity, in that most solemn form of averment which the law permits to the appellant, to deny all such guilty knowledge, intention, design, or confederacy.

In numerous cases brought by different plaintiffs upon contracts precisely similar in kind and degree for swamp lands in the State of Iowa the supreme court of the State has with unvarying uniformity decided the questions of property involved in those suits, sustaining the legality of like contracts and deeds of like lands made under the same circumstances and under the same statutes of the State, and with precisely similar provisions; all which judgments of the supreme court of Iowa in a matter of property in that State would be in fact reversed, though not in form, by the decision of this court at the last term in the cause at bar; and the appellant has always been advised and believes that it is the rule of the Supreme Court of the United States to follow the decisions of the supreme court of a State in regard to their local laws upon questions of property affecting titles to lands in that State.

It is true that in the cases referred to the question was not raised whether the law of the State of Iowa did not "introduce a scheme subversive of the trust imposed upon the State by the act of Congress," but the strongest affirmance of that statute is the fact that it passed so many times

under the review of the supreme court of the State, *consensu omnium*, unquestioned as to its validity and the propriety of its legal effect.

For a memorandum of the decisions in the cases referred to, and the substance of those cases, the appellant begs leave to furnish the pamphlet entitled "Decisions of the Supreme Court of Iowa Touching Swamp Land Titles," which was filed at the last term with his motion for a re-argument.

The trustees to whom the land was conveyed are as honorable, patriotic, right-minded, good citizens of the United States as any therein, and they should not be charged as schemers for wrong-doing, for subversion of public interests, and confederacy in misapplication of public funds, to stand perpetually recorded in the reports of the decisions of the Supreme Court of the United States in a cause in which they were not parties, and not commanded or permitted to appear, and in which they were not heard by proof or argument.

These so weighty considerations are not the only grave consequences that may flow from this decision, unreversed, which declares that the law of a State allowing counties to dispose of the swamp lands granted by the United States to the States, and expend some portion of the consideration received therefor at will, containing a provision that the purchaser shall release the State or county from the obligation of reclaiming the lands, whether those lands need reclaiming or not; whether they have been in fact reclaimed or not, or whether a fund has been accumulated and set apart sufficient to reclaim them or not, a fund accrued by a sale of a portion of them, is a *scheme, ex vi termini*, "subversive of the trust, repugnant to the express stipulation of the act of Congress, and was calculated to

facilitate and encourage a wasteful and corrupt disposition of the lands."

The act of Congress of 1850, with its amendments, applies to all the overflowed or swamp lands in the several States, and there has been much legislation about the disposition of these lands. Some in consonance with that of the State of Iowa, some different, and some much more open to objection than that of Iowa, all which are characterized in terms so severe by the court that it must of necessity raise doubts upon titles, encourage a crop of litigation, the fruits of which must be very disastrous.

It may be replied to this that the opinion of the court excepts lands acquired by *bona fide* purchasers without notice. Who are *bona fide* purchasers without notice? All men must be presumed to know the law. The contract and deed under which the appellant and others own these lands are recorded. The purchasers know the law and are informed of the contents of these deeds, and they take them with a knowledge that the law under which they are founded, in the language of the Supreme Court, is "a scheme for corruption and subversion of trusts."

In the present case how there could be any purchaser of those lands, a *bona fide* purchaser without notice, assuming that the purchase of the company was against law, it seems impossible to say. The deed to the trustees was recorded, and it is set forth in the body of the deed, where the contract under which it was made was recorded, so that the whole "*corrupt scheme*" was on record either in the statute-books of the State or the records of the county wherein the land lay. And if ever a purchaser is expected to be affected with notice of an illegal and corrupt transaction, such record notice has always heretofore been held sufficient.

The principal question involved in this case was decided in the case of Kenicott *vs.* The Supervisors, 16 Wal., 452.

In that case this court affirmed the validity of a mortgage on swamp lands given by the county of Wayne, Ill., under and by virtue of a law of that State, the 7th, 8th, 9th, and 10th sections of which read as follows:

"SEC. 7. The corporation may borrow such sums of "money as they deem advisable, and upon such terms as "they may agree, for the carrying out of the objects of this "act, and may provide any security therefor they think "best, by bond and mortgage, or otherwise.

"SEC. 8. The county court of Jefferson county are here- "by authorized and empowered to subscribe for such "amount of the capital stock of said company as they may "think proper. They may issue the bonds of the county, "and provide for the payment of the principal and interest "thereof, by *sale* or *mortgage*, *one or both*, of the *swamp* "and *overflowed lands* of said county, and dispose of such "bonds for money to pay, or in payment of, their subscrip- "tion to said stock; all and each to be upon such time, "*terms*, and in such *mode* as they may *deem* best; or they "*may make such other disposition* of said swamp and over- "flowed lands in *aid* of the *construction* and maintenance "of said railroad as they *deem best* for the public interests "of said county.

"SEC. 9. Before any disposition is made of said swamp "and overflowed lands, or any subscription to the stock of "said company, the said county court may, at any regular "or special term of said court, order a special election to "be held for the purpose of taking the sense of the quali- "fied voters of the county thereupon—giving such notice "thereof as they may deem proper—and which shall be "conducted, and returns made, canvassed, and published "in all respects as other county elections.

"The county court shall prepare a proposition or propo- "sitions of the mode or modes, one or more, containing a "*brief, clear, distinct idea of the plan or plans proposed* "*by them for aiding in constructing of said road;* which "said proposition shall be printed at large as an election

" ticket, and the voters may express their will on said pro-
" position by writing 'yea' and 'nay' on a separate ticket.
" The proposition or plan having the highest number of
" votes shall be adopted by the county court."

" SEC. 10. Any county through which said road *may* run,
" and *every* county through which *any other railroad may*
" run with which this road *may be joined*, *connected*, or *in-*
" *tersected*, *may*, and are hereby *authorized* and *empowered*
" to, *aid* in the *construction* of the *same*, or of *such other*
" *road* with which it may so connect; and for this purpose
" the provisions of the seventh, eighth, and ninth sections
" of this act *shall extend*, *include*, and be *applicable* to
" *every* such county, and *every such* railroad."

It will be seen that the act of the Illinois legislature authorizing Wayne county to dispose of its swamp lands is very like in its provisions to the act of the Iowa legislature under which Adams county disposed of its swamp lands to the appellant. The law of Illinois authorized the disposal of the Wayne county lands by sale or mortgage, one or both, in aid of the construction and maintenance of a railroad. The Iowa law authorized the disposition of swamp lands to aid in the erection of public buildings for the purpose of education, the building of bridges, roads, and highways, or for building institutions of learning, or for making *railroads* through the county or counties to which such lands belonged. The Illinois law did not limit the county to a sale or mortgage, but authorized such other disposition of said swamp and overflowed lands in aid of the construction and maintenance of said railroad as might be deemed best for the public interest of said county. The Iowa law does not limit the county to a sale or mortgage, but provides that the county may *devote* the lands, or the proceeds thereof, in whole or in part, &c.

The Illinois law provided that before such disposition be made of the swamp lands, the question should be submitted to a " special election, to be held for the purpose

" of taking the sense of the qualified voters of the county " thereupon."

The Iowa law also provided that the question as to disposing of swamp lands should be submitted at some general or special election to the people of the county. The Illinois law placed the matter in charge of the county court.

The Iowa law placed the matter in charge of the proper officer or officers of the county.

The swamp lands in Illinois were held by the same title under which the Iowa lands were held. The legality of the mortgage given by Wayne county was disputed on the ground of the want of consideration. The legality of the sale of Adams county swamp lands is disputed on the ground of want of sufficient consideration.

Wayne county made no provision, so far as the record shows, by which the mortgagee was bound to reclaim the lands or to cause them to be settled, or to hold the county or the State harmless under the act of Congress requiring the proceeds of swamp lands to be devoted, so far as necessary, to their reclamation. The contract of sale by Adams county made such provision. This court held the Wayne county mortgage valid, and for seven years purchasers and sellers of swamp lands have had the case of Kenicott *vs.* The Supervisors as a rule of law to govern them in their dealings with said lands.

A rule of law thus sanctioned by the highest tribunal in the country, and acquiesced in and enforced by the courts of very many of the States having swamp lands, cannot be reversed without causing infinite damage to the inhabitants of those States. Has that rule of law, thus prescribed by this court and enforced by the highest courts of so many States, worked any hardship to remedy which such a sweeping revolution can alone furnish a remedy? If such a

revolution must be inaugurated, who hereafter will be safe in purchasing any lands granted by the United States to any State or any corporation for any purpose whatever?

The only safe title that the purchaser can have will be one made to him directly by the Government, and trust lands hereafter will cease to have any marketable value.

B. F. BUTLER,
O. D. BARRETT,
Counsel for Appellant.

1879
10-61
Filed
Oct 27. 1879

Appellee's Brief upon Rehearing.

SUPREME COURT OF UNITED STATES.

No. 16.

The American Emigrant Company,
Appellant,

vs.

The County of Adams.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FRANK M. DAVIS,
R. P. LOWE,
Solicitors for Appellee

BERESFORD, PR., WASHINGTON.

APPELLEE'S BRIEF.

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The County of Adams.

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Statement of Facts.

First. In 1854 the county authorities of appellee caused to be selected and reported, under oath of a county surveyor, to the Commissioner of the General Land Office, through Warner Lewis, surveyor general, a list of swamp lands in said county, containing 13,674 acres of swamp land, under the acts of Congress and the State Legislature of Iowa, familiar to the court, which was duly marked on the tract books of the Commissioner, and reserved from sale as swamp lands in March, 1855. (See printed record, pp. 62–68 and 121–125.)

Second. This entire reported list of lands was *confirmed* as swamp by act of Congress of the 3d of March, 1857. And Congress, by that act at that time, directed patents to be made to all of it remaining unsold. Afterwards, on the 13th of August, 1860, patent No. 27 was made to appellee for $2{,}914\frac{98}{100}$ acres of the said lands, and on the 5th of June, 1861, a like patent, No. 59, was made for $765\frac{53}{100}$ acres, making a total of $3{,}680\frac{51}{100}$ acres. (See record, p. 206.)

Third. In 1861 the county authorities caused indemnity proofs to be prepared to secure from the United States an *unadjusted* claim for cash indemnity in the sum of $6,075.66, and land indemnity of $1{,}027\frac{12}{100}$ acres, also, proof of the swamp character of 4,460 acres lands in place, in odd sections not then patented. A sample copy upon one forty-acre tract is printed in full in record, pages 130, 131 and 132, with the letter of transmittal of Stewart Goodrell, which *proofs* were the *basis of the adjustment* of the indemnity afterwards allowed, as certified by Drummond, Commissioner. (See record, p. 120, letter "G.")

Fourth. Prior to the 3d of September, 1862, the county had disposed of $1{,}670\frac{29}{100}$ acres to actual settlers, under the swamp land pre-emption laws of Iowa. But no part of the swamp lands had been fitted for cultivation, except the 1670 acres so pre-empted and settled upon by actual settlers.

Fifth. On the 3d day of September, 1862, the county owned the entire balance of said selected list, which was styled in the contract by the words "fund" and "claim," amounting to $10{,}094\frac{42}{100}$ acres; and also the unpre-empted lands patented, amounting to $2{,}010\frac{22}{100}$ acres. These lands, and the *fund* and *claim*, consisted of the following items and values, according to the minimum price of $1.25 per acre fixed by the laws of Iowa:

	ACRES.	CASH VALUE.
1. The patented lands in place described in the deed Exhibit "B" to bill, (record, p. 45,) - - -	2,010.29	$2,512 80

Unadjusted Claims for Land.

	Acres.	Cash Value.
1. Lands in place patented since September 3d, 1862, by patents Nos. 160, 176 and 190, as agreed to, (record, p. 206,) - - - - - - - -	1,016.23	$1,270 29
2. Indemnity land since patented by patents Nos. 8, 80 and 90. (See record, bottom page 206, top 207,)	1,027.12	1,283 90
3. There is an unadjusted claim for lands in place, for - - - - -	3,090.55	3,863 20
Totals, - - - - - -	5,133.90	$6,417 39

Unadjusted Cash Claims.

	Acres.	Cash Value.
1. Cash indemnity received by Savery of the Governor of Iowa, June 10th, 1865. Draft No. 249. (Record p. 137, Exhibit "A.") - - -	3,442.77	$4,303 45
2. Cash indemnity received by Savery, November 10th, 1866. Draft No. 1,250. (Record p. 138, Exhibit "C.") - - - - - - -	635.57	794 58
3. Cash indemnity received April 10th, 1867. Draft No. 1,721. (Record p. 138, Exhibit "D.") - - - -	782.11	977 63
(As to all these drafts see also record, pp. 109–113.)		
Totals, - - - - - -	4,860.45	$6,075 66

Encumbrances.

Sixth. There was an encumbrance for expenses and outlays incurred by the county upon the above unadjusted claim of $2,200 for surveying, platting, procuring indemnity proof, and other proper expenses incurred in the county relating thereto, which existed as a just claim, and was

ageed to be paid by appellant as one of the conditions of the agreement of September 3d, 1862.

Seventh. On the 7th of September, 1863, the Board of Supervisors made the *deed* as an escrow, and deposited it with the clerk of the board, John Bixby, to be delivered on the execution of a mortgage, which mortgage was to be conditioned to secure the full performance of all the terms and conditions of the agreement of September 3d, 1862. See Exhibit "B" to bill, (record, bottom p. 47.)

In February, 1865, the Emigrant Company constituted appellee's clerk, who held the deed, John Bixby, *their agent*, and he commenced to act in their employment. (Record, top page 181.)

And June 19th, 1865, the appellant paid appellee $2,000, through Bixby, the clerk, on the contract, and thereupon, the clerk caused the deed to be recorded *without the execution of the mortgage.* (See agreement upon evidence, record, p. 180. Bixby's evidence, record, p. 181.)

Eighth. The county agent, Bixby, put the deed on record, and sent it to the company *without* the knowledge or consent of the board, and against the express condition of its deposit. The county agent, Savery, forcibly retained and paid over to the appellant $4,075$^{66}_{100}$ being all the cash received, except the $2,000 paid appellee. Appellant has not drained or fitted for cultivation a single acre of the land, nor has it expended any money therefor; nor has it sent a single settler into the county. It did sell to old residents of the county, about 1,500 acres of the deeded lands in place in 25 different tracts; and 12 of those tracts had been partially improved in 1871, yet 13 of them were still entirely uncultivated.

The Emigrant Company refused, after repeated demands, to pay off the *encumbrances* as above stated, and the county applied the $2,000 to that purpose. Since then, the county has refused to make any further deeds.

Ninth. The appellant is a foreign corporation, for pecuniary profit, organized under the laws of Connecticut, and having its principal place of business in Hartford; it has never been organized under the laws of Iowa, nor in any way submitted to the jurisdiction of its courts up to the time of the commencement of this suit. Jurisdiction in the local court in this suit was obtained by publication service. (See printed record, pp. 28, 29 and 30; also, petition for change of forms, p. 31.)

I. Present Opinion Sustained.

The opinion of this Court, heretofore filed, affirming the decree of the Circuit Court appealed from, is so manifestly just in its results, and so clearly in conformity with the former decisions of the Court and the known rules and precepts of equity, and so fairly and logically in accordance with the powers of Congress as defined in the Constitution, and with their intent as declared in the swamp land act, that the Court ought, as we think, to stand by it, reaffirming the decree of the Circuit Court for the following reasons:

First. Congress has the undoubted right to dispose of the public domain, and the laws of any State repugnant to the laws of the United States are absolutely void. Congress, by its act, in the first section, granted the lands and definitely fixed the purpose of it; and in the second section, by the clearest and most unmistakable language, prohibited the disposal of the proceeds of the land to any other purpose; that, whether the proceeds of the land were obtained by a sale of the land or by a direct appropriation in kind, they were to be applied *exclusively*, as far as necessary, to the purpose of reclaiming said lands by means of levees and drains. The grant was to the State, and the obvious duty of the State was a simple and just compliance with this plain condition of the grant. In the first instance, in accepting the grant, the State fully understood this condition; and, to carry it out in good faith, enacted the most stringent

laws in direct accord with the grant. (See Revision of Iowa, sects. 925 to 985, inclusive.) The swamp land executive officers were to be sworn to carry out this very condition, and placed under a ten thousand dollar qualification bond, which should be increased if money came to their hands, conditioned to the faithful application of the proceeds of the sales of the swamp lands. The Legislature of Iowa did not misunderstand the intent of Congress. That the condition of the swamp land act of Congress was interpreted as a *trust* on the part of State to be carried out, is clearly proved by this primary legislation. This interpretation of the grant by the Legislature upon accepting this grant is the best proof that this trust existed, and is conclusively binding upon the State for its fulfillment. But the act of 22d March, 1858, ignores this first legislation. It repudiates the trust, overrides the grant, and diverts the property. "It shall be *competent* and *lawful* for the counties owning swamp lands to devote the *same, or the proceeds thereof, either in whole or in part*, to the erection of public buildings, the building of bridges, roads, &c.," declares the act, in the first section, (Revision, sect. 986,) and by the 2d section, (Revision, 987,) "the officers may contract it to any person or company, *in whole or in part*, to aid any such scheme of improvement, with no provision for fitting it for cultivation by making the necessary drains or levees. The only provision being that the company so purchasing shall release the State and county from all obligation to drain it. The proviso itself is a pregnant affirmation that it was the contemplation of the act to sell the lands *before* they were drained. Congress had declared that such diversion was unlawful; but the Legislature coolly demolished the law of Congress, and made it "competent and lawful" to devote the lands to other purposes. The repugnancy between this act of the Legislature and the swamp grant is so plain and forcible to the comprehension that it would seem to need no further elucidation.

(For the convenience of the Court, the full text of both acts is here printed.)

Swamp Land Grant, September 28, 1850.

"*Be it enacted by the Senate and House, &c.*, That *to enable the State* (of Iowa) *to construct the necessary levees* and *drains to reclaim the swamp and overflowed lands therein*, the whole of those swamp and overflowed lands *made unfit thereby for cultivation* which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

"2*d. And it is further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plan of said land described as aforesaid, and transmit the same to the governor (of Iowa;) and at the request of said governor, cause a patent to be issued to the State therefor; and on that patent the fee simple to said lands shall vest in the said State (of Iowa,) subject to the disposal of the Legislature thereof: *Provided, however*, that the proceeds of said lands, whether from sale or direct appropriation in kind, *shall be applied exclusively, as far as necessary*, to the purposes of reclaiming said lands, by means of levees and drains aforesaid."

See 9th Statutes at Large, p. 519.

Iowa Act, March 22, 1858.

"Section 1. Revision of 1860, Sec 986 *Be it enacted, &c.*, That it shall be competent and lawful for the counties owning swamp and overflowed lands to devote *the same or the proceeds thereof, either in whole or in part*, to the erection of public buildings for the purpose of education, the building of bridges, roads, and highways, or for building institutions of learning, or for making railroads through the county or counties to which such lands belong: *Provided*, that before any of said land, or the proceeds thereof, shall be so devoted to any of the purposes aforesaid, the question whether the same shall be so done shall be submitted at some general or special election to the people of the county.

"Sec. 2. Revision, Sect. 987. The proper officer or officers of any county may contract with any person or company for the transfer and conveyance of *said swamp or overflowed lands, or the proceeds thereof*, or otherwise appropriate the same to such person or company or to their use, for the purpose of aiding or carrying out any of the objects mentioned in the first section of this act, which said contract shall be reduced to writing and signed by the respective parties or their lawfully authorized agents.

"Sec. 3. Revision, Sec. 988. Before such contract shall be of any force or validity, the same shall be published for four weeks immediately preceding some general or special election in some newspaper published in the county; and if there be none published therein, then *three copies* of the same shall be posted in *three of the most conspicuous*

places in each township in the county, for the length of time aforesaid, together with a proclamation of the proper officer, and directing how and where the vote thereon shall be taken, and returns made and canvassed, *and in what manner or form the people shall vote thereon;* and if it shall appear that a majority of the people in any county voting thereon are in favor of the contract or proposition submitted to them, then, and in that case, such contract or proposition shall be binding upon the parties thereto; but if a majority of the people voting on such proposition are against the same, then it shall be null and void; *Provided*, that no sale, contract, or other disposition of said swamp or overflowed lands shall be valid unless the person or company to whom the same are sold, contracted, or otherwise disposed of to, shall take the same subject to all the provisions of the act of Congress of September 28, 1850, and shall *expressly release the State of Iowa* and the county in which the lands are situate from all liability for reclaiming said lands."

Second. In the second place we claim that if the decision is otherwise than as announced in the opinion already filed, then the former decisions of this court would be repugnant to it. The present opinion is consistent with those former cases, and, if changed, those cases will be necessarily overruled.

Thus in *McGhee* vs. *Mathis*, 4th Wallace, 143, it is decided that to levy a tax on swamp land before the proceeds of the land is expended in draining it was unconstitutional. That the swamp grant, and its acceptance by a State, constituted a contract, and legislative acts embarrassing its execution were void. The principles of this case fully settle the one at bar. Also, the cases of *Clark* vs. *Washington*, 12 Wheaton, 54; *Smith* vs. *Stevens*, 10 Wallace, 326; *Cohen* vs. *Virginia*, 6 Wheaton, 414; *Gibson* vs. *Choteau*, 13 Wallace, 92.

To the same effect is *Cook* vs. *Burlington*, 30th Iowa, 94.

Third. The former opinion should be adhered to for still further reasons. It would be manifestly against public policy to "sustain the diversion of these public lands from their designed purposes. If it may be done in one case it may in another, and any and every public grant may be diverted. The principle is the same in every case. These grants are public lands, set apart for a designated public

purpose. This sale was a sale in bulk of all the lands in a county to a corporation, who purchased them for speculation solely, and without any restriction as to their use or obligation to carry out the trust imposed in their donation. The execution of this public trust is now entirely in the hands of these speculators, who will manifestly execute it, not as a public duty, but as it appears profitable to themselves. The price of the purchase is so low that they could well afford to abandon *all the lands forever*. The indemnity money alone more than three-fold overpays the entire purchase price.

The appellants' counsel admit that this same company purchased the swamp lands in bulk, situated in *sixteen* other counties, and the record discloses *four* others, making twenty counties in all, at prices the same or less than that paid in this case, amounting in the aggregate to nearly half a million acres of swamp lands. All of it is undrained, uncultivated, and unfit for it in its present condition; all of it is now in the hands of these private speculators. Cheap lands for trading stock solely. The record shows that this company have been guilty of the most deliberate and premediated frauds, and crimes in the acquisition of these lands, and in their efforts to wrong the United States under color of their purchase.—(See printed record, Ex. "A," pages 134, 135, and 136.) The gigantic proportions of their operations were astounding. The claims for fourteen counties for indemnity were sought to be established by *forged* affidavits, and by getting affidavits signed in blank, to be filled up at a distant place with such statements as might be found most effective to establish the facts desired. These affidavits were sworn to before a pretended officer who had no jurisdiction to administer oaths. The entire operations of this company in Iowa are in flagrant violation of the laws of the United States, conceived in a breach of trust on the part of the Legislature, and carried out in a spirit of shameless peculation and cupidity.

Add to the above considerations the one that appel-

lants are a foreign corporation, whose franchise is in no manner subject to the State of Iowa; a creature which may have the form of life, but not the substance; whether it may hold real estate in Iowa will be hereafter discussed; certainly it may commit frauds, violate the law, ignore the policy of that State in every matter wherein money could be made, and not forfeit its franchise; that is safely lodged in a distant State. If a local or domestic corporation commits an act of fraud, or makes false representations as to its standing or purpose, or is guilty of illegality, the franchise is forfeited by the laws of the State, and the courts proceed to wind up its affairs and annul the charter. Connecticut could not forfeit the franchise, because the acts are committed outside its jurisdiction. Iowa cannot reach its charter because it is granted by a sovereignty beyond its control.

This, then, is the subtle and intangible creature now before the court, which violates all the laws of honesty and fair dealing, and commits crimes without the fear of corporal punishment, and plunders the public of its property and peculates upon the public treasury without dread of forfeiture. The courts of the United States alone are able to mete out ample justice in this case, and for this reason, if for none other, the decree ought to stand.

Fourth. The decree of the Circuit Court is just and equitable in all its parts. It restores to appellee, that out of which they were wronged and deceived. It takes from appellant nothing they ever had. If they have expended any money in taking indemnity proof, the cost of it is to be allowed. Appellant has never paid any money or delivered any property to appellee, and none should be awarded to them. Purchasers pending the contract are fully protected. The expenses of a lobby at the land office in Washington, of course, are disallowed; no court could consider them as legitimate damages; the presence of such a lobby at the land office was wholly unnecessary; the business of that office could be better transacted without it; the lobby and

attorneys were all engaged in procuring indemnity allowance for lands selected after the act of March 3, 1857; the expenses had nothing to do with the lands of appellees, and appellees' proofs were allowed *before* Savery qualified. The operations of appellants have been a *hindrance* to public improvement; they have held large tracts of swamp land unimproved, to the great detriment of the community. These lands were beyond the control of the counties, and appellants doing nothing, but awaiting the general improvement of the country, till their lands advanced in price, which were exempt from the ordinary burdens of taxation by the terms of the agreement, in the mean time, whether that time be long or short. That a great wrong was being perpetrated by appellant upon the State in its money-making schemes was felt by all. The people of the country, the officers, and the judiciary were unanimous in its condemnation, and when the opinion of this court was announced last term, it was published throughout the State as glad tidings of deliverance, the harbinger of peace, and the consummation of long delayed justice.

II. The Amendatory Act of 1862.

It is claimed by appellants that, by an act which took effect April 5th, 1862, section 986 of the revision, was amended, and its objectionable features and repugnancy thereby removed by the Legislature of Iowa. But appellee says this last act, instead of obviating the repugnancy of the Act of 22d of March, 1858, only served to intensify its virulence. That this last act is the very keystone to the whole scheme of peculation so artfully planned and cunningly executed. It bears upon its face the conclusive evidence that it was enacted in the interest of appellant, and by its operation inevitably compelled the officers of the counties owning swamp lands to sell to this emigrant company rather than apply it themselves, had they chosen to do so. The act is as follows:

"AN ACT to amend section 986 of the Revision of 1860, in relation to swamp lands."

"SEC. 1. *Be it enacted by the General Assembly of the State of Iowa*, That section 986 of the Revision of 1860 be amended so as to read as follows:

(Here insert 986 of the Revision as enacted March 22, 1858, printed on pages 7 and 8 hereof, adding the following provision, which is all of the change.)

"*Provided*, That no county is hereby released from its obligation to make the necessary drains and levees contemplated by the act of Congress of September 28, 1850, and the act of the General Assembly of this State, passed January 13, 1853."

Let it be remembered by the court, that the act of 22d March, 1858, is in three sections, and constitute sections 986, 987, and 988 of the Revision of 1860. That by section 986 the county officers could contract the swamp lands to build a court house, bridge, or railroad, and by 987 the county officers could contract it to a company to aid such work. Let the court further observe that section 987 is *not amended* nor in any manner changed. But the amendment only refers to 986, where the officers apply the swamp lands themselves. If the officers apply the land themselves the county, by the amended proviso, is still liable to drain them; but if they contract them to this company under section 987, then the county would escape that liability. It virtually compels the officers to sell the lands to the company, for by so doing their condition was bettered to the extent of the draining of the lands. The company was not bound to drain the lands. If they were contracted to it they need not be drained; if applied without the agency of the company they must be drained.

The act itself is a legislative confession that the act of Congress imposed upon the State the obligation to drain the lands. That the act ceding them to the county on January 13th, 1853, imposed this obligation upon the counties, and on its face clearly admits that, by section 986, as it previously

stood, the counties were excused from draining the lands. These are the legislative confessions and declarations sustaining every position of this Court in the opinion heretofore filed. The Court will observe that by this last act the Emigrant Company succeeded in forestalling the swamp land market, and abolishing all opposition to its schemes. The agreement in suit was made after this act was passed, as were also most of the other counties, including Wright county, before decided by this Court. This act is as clearly in the interest of the Emigrant Company as their managers could have desired. That it operated in their favor as the last and crowning act in the *drama of diversions* is abundantly demonstrated.

III. Foreign Corporations and their Rights to Contract in Iowa and to Hold Real Property for Speculation.

The petition of appellee alleges in broad terms that the contract and deed are illegal and void, and that the board of supervision of appellee had "no power or authority to make the same, and that they are not binding upon appellee as matters of law." It is further averred, that the lands were held under a trust from the United States; that appellant agrees to perform the trust and has failed to do so, and refuses to do so, and prays for general relief. The answer of appellant specifically denies these allegations as to the legal power of the Board of Supervisors. Thus, near the top of printed Record, page 51, the answer denies "that the Board of Supervisors had *no authority* to make such contract as a binding obligation upon the appellee." And the same denial is made as to the alleged want of authority to make the deed and dispose of the indemnity claims. These averments and denials raise in the pleadings the entire question of the legality of the transactions considered as a whole transaction. If the laws of Iowa authorizing this sale are void because they are repugnant to the act of Congress, then such laws are *not* laws, and the sale would be without authority.

If the Board of Supervisors or county was legally incapacitated to contract or the appellant in law incapacitated to receive and hold the lands for any reason, then the Court would set aside the transaction, and liberate the property from the apparent cloud under which it exists. There is one further legal reason we desire now to present to the Court, and insist upon its determination, unless the present decree shall be affirmed upon other grounds; which is—

That the appellants being a corporation organized under the laws of Connecticut, a foreign State cannot acquire and hold real estate in the State of Iowa for speculative purposes. This case is one of an aggravated form, and clearly the rule ought to be applied here, if at all. The appellant is the claimant of large sections of country which were ceded to the State of Iowa in trust for certain drainage purposes. It is admitted to be swamp land, unfit for cultivation in its present condition. Appellant claims in the rehearing that appellee should be required to prove that the lands need draining. But the pleadings dispense with such proofs. It is alleged to be swamp land in the petition; which allegation the answer in express terms admits. This appellant claims to have acquired by some means the title to this trust land. They admit they have not drained it, "and deny their obligation to do so. Appellants are in no manner subject to the laws of Iowa. The record shows that they have never been incorporated in Iowa. (Rec., p. 31.)

Their charter, which is their life, is in a distant State, subject to other and different laws. Can such a being, then, have legal life outside of the sovereignty which created it? If its charter is its life in law given by the sovereign State of Connecticut, does that life extend beyond the limits of the sovereignty thus giving the life? By departing from the State where the law granting the charter has force, does not the corporation cease to have legal life? Connecticut cannot make a law having any force in Iowa. Appellants existence is a part of the laws of Connecticut. Logically,

therefore, appellants' existence can have no force in Iowa. And if this be true, they could make *no* contract there, and this property must be returned to its owner. It is well established that the laws of a State can have no extra territorial force. Corporations are not common law persons. They are in some manner the creation of legislative enactment. Now if the Legislature of Connecticut can create by legislative enactment a legal person which the State of Iowa would be compelled to treat as a person, then to that extent the State of Iowa most clearly would be compelled to enforce and recognize the obligation of the Connecticut law. That appellant is a mere creature of local law, and not a citizen of the United States, nor capacitated to take and hold large tracts of land in the State of Iowa, is fully sustained by the following authorities:

Carroll *vs.* East Saint Louis, 67 Ill., 568.
Marietta Bank *vs.* Pindall, 2d Randolph, Va., 465.
Paul *vs.* Virginia, 8 Wallace, 168.
Ducat *vs.* Chicago, 10 Wall., 410.
Runyan *vs.* Carter, 14 Pet., 122.
Bank of Augusta *vs.* Earl, 13 Pet., 589.
O. & M. R. R. *vs.* Wheeler, 9 Black, 297.

The Comity of States

Extends only to the right to sue for a redress of grievances. It may extend to the right to make contracts in regard to personalty, if clearly within the policy of the state; but it does not extend to the right to exercise the rights of the foreign franchise over the land, the soil of the State and to the unlimited extent claimed by appellant.

It only remains to be seen whether the laws of Iowa recognize the right of foreign corporations to hold lands in that State, and wherever examined, whether in regard to the control exercised over the corporations organized in the State, or in their restrictions as to the acquisition of land within the State by such corporations, or in regard to the numerous prohibitory provisions relative to perpetuity in

land titles, an unsurmountable bulwark is found against all the claims of appellant.

The first territorial legislature assembled in Burlington, in December, 1838, and amongst the acts of the first session was an act to incorporate county agricultural societies. The right to acquire land was given, but limited in value to $1,000 if held longer than nine months. From that date up to 1851, when there was a general incorporation law passed, many private acts of incorporation were passed, in every one of which (excepting those to colleges, and other institutions of learning,) there is a limitation as to the amount or value of lands that could be acquired, or the length of time they could be held.

By the constitution any contract reserving rent on land after 20 years is *void;* and corporations can only be created by a general law, and have no rights not possessed by a natural person, except as fixed by law; and incorporations may be changed or abolished at any time. And no corporation can exist more than 20 years, except those for internal improvement, may exist 50 years. By a general provision of the statute since 1851, (Rev. 2199,) a disposition of property suspending the power to control it for a longer period than 21 years after the decease of persons then living is void. Banks and insurance companies are prohibited from holding or taking title to more land than is absolutely necessary to transact their business upon, unless it be necessary to collect a debt. A bank cannot even accept a mortgage to secure a loan, (Rev. 1612, 1613, 1663, 1668, 1749.) Agricultural and horticultural corporations cannot hold to exceed *nine sections* of land. Under the general law, chap. 52 of revision 1860, under which all companies doing business must organize, it is an impossibility for any foreign corporation to do business. It provides that no corporation can do business in the State until it has filed its articles with the recorder of the county, where its principal office is (1152); also, file a copy of the articles of incorporation with the secretary of State. Give a publication notice of its organi-

zation, keep a copy of its by-laws posted for public inspection, (1161, 1162.)

Fraud or failure to comply with these provisions operate as a forfeiture, and the courts may proceed at once to wind up its affairs; and if once fully and lawfully organized, its franchises may be sold on execution (1170). It is even provided that railroad lands granted to said State by act of Congress, must be sold in three years from the date of completion of the road. (Statutes at Large, vol. 13, page 99, sec. 9.) Their property is subject to taxation as other property and private property is liable for corporate debts. And intentional fraud in failing to comply with the articles of incorporation so filed, or deceiving the public in relation to its means, renders the guilty ones subject to fine and imprisonment. It has been held by the Supreme Court of that State that the State courts could not declare a forfeiture of the corporation articles of a foreign corporation. *Casey* vs. *C. C. R. R. 5th Iowa*, 367.

The privileges granted and exercised by private corporation are to be strictly construed. (*O. & M. R. R.* vs. *Wheeler*, 1st *Black*, 380.) Now how is it possible under this state of law for a private corporation of a foreign State to establish a place of business in the State of Iowa and exercise all its franchises there as if duly incorporated, without filing its articles, without notice, without individual liability, without taxes, with its franchise exempt from execution, and safe against forfeiture by any State court to take the title to vast tracts of lands as a proper legal person. This fungus upon the body politic; this barnacle upon the ship of State, without personality or life or being, and without responsibility in the State, whose name or face could not be called or recognized in a court of justice, were it not for the respect the State has for her sister State of Connecticut, is in no sense a legal person to take title to land.

Carroll *vs.* East Saint Louis, 67 Ill., 568.

Paul *vs.* Virginia, 8 Wall., 168.

IV. Assignment of the Unadjusted Claim for Cash.

This claim for cash indemnity, under the name of "fund and claim of the county on the General Government," was lumped into the contract with the land; was sold and transferred by the said agreement, fully and completely. No other writing or assignment has been at any time made, and appellant acknowledges the receipt of the cash.

For this claim for $6,075 *nothing at all was paid*, or agreed to be paid.

Smurr, a member of the Board of Supervisors, testifies:

"Not any of the two thousand dollars was to be paid for the indemnity fund and claim." (Record, p. 154, inter. 9.)

Barnett, a member of the Board of Supervisors, testifies:

"In arranging the written agreement the fund and claim was put down with the lands. McKay said the company would not pay anything for the claims, as they were doubtful. They wished to have them with the land. I asked him to take the land at $2,000 and leave the claim out. He said, No, no, he wanted the claim along, and he would be clear of all trouble." (Record, p. 177, inter 17–22.)

In the answer appellant avers as follows:

"That this defendant *purchased* the claims of said county against the Government of the United States for indemnity money and scrip, and also purchased land in place, of said county, assuming all risks of failure to establish said claim or any portion thereof; that defendant also *undertook to prosecute said claim at its own expense*, and to defray all expenses which plaintiff had then incurred," &c. (Record, bottom page 52.)

Here it is admitted that appellant purchased this unadjusted claim, and was to prosecute it at his own expense—an act which is a fraud upon the public Treasury of the United States, and void.

"*Be it enacted, &c.*, That all transfers and assignments hereafter made of *any claim* upon the United States, or any part or share thereof, or any interest therein, whether absolute or conditional, whatever may be the consideration therefor, and

all powers of attorney, orders, or other authorities for receiving payment of any such claim, or any part or share thereof, shall be absolutely null and void, unless the same shall be freely made and executed in the presence of at least two attesting witnesses, *after the allowance of such claim, the ascertainment of the amount due*, and the issuing of the warrant for the payment thereof."

Sec. 10, Statutes at Large, chap. 81, p. 170.

The claim of appellee had *not* been allowed, nor the amount ascertained to be due, nor the warrant issued. The claim was represented as *worthless*. Appellant, by false representations, procured the assignments, and corruptly agreed with the Board of Supervisors to "*prosecute it at their own expense.*" And in equity the appellant should account for the money as received on a void contract.

United States *vs.* Gilles, 95 U. S., 407.

Spofford *vs.* Kirk, 97 U. S., 484.

V. THE AGREEMENT IS PROHIBITED BY STATUTE AND IS VOID.

Section 959 of the revision of 1860, of the laws of Iowa, reads thus:

"*No Swamp or overflowed lands shall hereafter be sold at less than one dollar and twenty-five cents per acre.*"

It is section 4 of chapter 110, acts of the General Assembly of 1855. It has been in full force from that date, and is now the law of Iowa. *It* is a just and reasonable prohibition upon sales for insufficient or nominal consideration, the effect of which would be to squander the land and not affect its reclamation. As Government land that was its price, and indemnity was granted at that rate.

The agreement is a sale of the land, funds, and claims of the county. The first section of the agreement contains these words: "And agree to *sell*, *release*, and *convey*." (Record, p. 43.)

The deed contains these words: "*Resolved*, That this board does now grant, *sell*, and convey." Also this: "It is a condition of this conveyance that in case any lands are included

in the foregoing description which are not *contracted to be sold* to said company by said written agreement, &c., then they are reserved," &c. (Record, pp. 46 and 47.)

In McKay's letter requesting the deed he says: "The company has already entered with great earnestness upon its system for procuring emigrants and settlers to occupy the lands *purchased* of your and other counties." * * *

"You will find in the deed ample reservations so that no land not *sold* to us can possibly be conveyed by this deed." (Record, p. 91.)

In the record of the Board of Supervisors of McKay's proposition it is thus expressed: "Now comes F. C. D. McKay, agent, &c., * * * and makes a proposition to *purchase* the swamp land interest of Adams County for the sum of two thousand dollars."

Barnett testifies that the words "for the *sale* of swamp lands," was put on all the Democratic tickets in the county. That little printed billets were furnished by McKay, and that Bixby was to do the same to the Republican tickets. (Record, p. 175.)

Twelve witnesses testify, from the several townships of the county, that the proposition voted on was to *sell* two thousand acres of land for $2,000. The contract in fact covers the entire selected list, less the lands previously disposed of, being twelve thousand acres, or at the rate of $16\frac{2}{3}$ cents per acre, in direct violation of the above prohibition. That such a sale is void, see the following cases:

Wheeler *vs.* Russell, 17 Mass., 258.
Harris *vs.* Runnels, 12 Howard, 79.
Root *vs.* Goddard, 3 McLean, 102.
The Pioneer, 1 Deady C. C. Cal., 72–79.
Davidson *vs.* Lanier, 4 Wallace, 255.
Armstrong *vs.* Tolen, 11 Wheaton, 258.

But appellants will claim that the Supreme Court of Iowa have decided that when the agreement has been submitted to the vote of the people, the sale may be for a less price than $1.25 per acre, citing the case of Audubon County *vs.* Appellants, 40th Iowa, 460.

The contract passed upon in the Audubon County case appears to have been a "*dedication*" of the lands in kind and not a "*sale*," as in this case, and that authority would be inapplicable. In this case, by the very terms of the agreement, it is a "sale," and, whether voted upon or not, it is prohibited.

The wrongful making of the agreement by the Board of Supervisors, in a manner, or for a prohibited consideration, would not be legalized or incidentally ratified by the vote.

See Mayor *vs.* Reynolds, 20 Maryland, 14.
Webster Co. *vs.* Taylor, 19 Iowa, 120–123.
Smead *vs.* R. R. Co., 11 Ind., 109.
Cuyler *vs.* Rochester, 12 Wend., 165.
Dillon Mun. Corp., sections 373, 447, n. 3.

VI. The Fraud Alleged in the Bill is Fully Sustained by the Proof, and should be so Found by the Court.

For the purpose of determining the weight of the testimony, the court will take into the consideration the two contracting parties themselves, their motives, knowledge, &c., as well as the subject matter of the agreement, its location, character, and all its surroundings.

The appellee is a municipal corporation, a frontier county, controlled by a Board of Supervisors, all of whom were farmers and knew *nothing* about the laws of the United States or regulations of the Land Department. There were no facilities for obtaining such information. There were no reports from the Register of the State Land Office nor United States laws in that country. The county officers, who by correspondence have learned something of the condition of the claims were all in the army and knew or heard nothing till after the sale was made. The Supervisors had heard there was such a claim, and supposed they had got a patent for some land, but did *not know* whether the title under that patent would be good or not.

The indemnity proofs were at Washington, 1300 miles away; it required ten days for a letter to make the passage, and from four to eight weeks to obtain a reply to a letter. The passage of the Confirmatory Act of 1857, was wholly unknown as a fact. A single circular had been sent—from what source it came nobody knew—and the laws of Iowa was all they had.

As to the property, there were 2,000 acres actually patented. There were 4,200 acres lands in place, confirmed by act of 3d of March, 1857, requiring nothing to be done whatever; that was sure to be obtained. Then there were indemnity claims of $8,000 besides.

The appellants were a private corporation for pecuniary profit. Some of its officers were lawyers. John Hooker, the treasurer; S. P. Lyman, secretary; T. E. Brown, and McKay were all lawyers. They had fully investigated the condition of the swamp land matters. See Lyman's circular. (Rec., pages 114, 115.) They were buying these lands on speculation to make money out of them. Skinner, chief clerk of the Land Office, Swamp Land Division, was in their employ. The county of Adams had not offered its lands for sale; had no thought of selling them. McKay lived at Des Moines, a hundred miles away; two or three days travel as then traveled. They were buying from twenty or twenty-five other counties; were in the business largely. They were chartered by the laws of a distant State; were not subject to the laws of Iowa. In June, 1862, McKay travels this long distance and brings the matter before the board, and tries to work up a sale. In September he again comes and renews his efforts, employing Bixby, the clerk, and Barnett, the chairman of the board, and succeeds.

Now from the above surroundings it is apparent that the appellants' agents were greatly superior in intelligence and facilities for knowledge, and that appellants had reason to believe, and did believe, that the county's rights were very valuable, and that value was not understood by the county

agents. That appellants had a motive of private gain in making such representations as would induce a sale, and themselves to be the purchasers.

False Representations.

Appellees claim that the record clearly establishes the following false representations:

1st. That the title to the 2,000 acres of patented land might yet be questioned and the right to that was not yet certain. (See printed record, page 46.)

2d. That the *claim* for patents for further lands in place, for indemnity cash and scrip had been rejected, and that they were worthless, and that with the means afforded by the law to the counties nothing could be recovered, and that to the counties in their corporate capacity they were worthless. (Printed record, page 145, 147, 148, 154, 158, 165, 174, 195, and 197.)

3d. It was falsely represented that the Emigrant Company had superior facilities for securing the allowance of these claims, which facilities were not accessible to the county. Record, page 115.

4th. It was falsely represented that the indemnity proofs and claims for cash and scrip then taken and pending were worthless and had been finally rejected, and that the county, under the new regulations, could not prove any swamp lands to be entitled to indemnity, and that the claims for cash and scrip were finally lost to the county.

5th. It was falsely represented that the agreement in fact only included 2,000 acres of land at $1 per acre, and that was all there was of it, and all the property sold by it in fact.

6th. It was falsely represented that the purpose of purchasing the land was to drain and settle it and put orchards, groves, and settlers upon each tract, and that such would soon be done.

7th. It is proved that *money was paid* the county officers to secure their influence with the people at their election.

8th. That the election was not advertised, but was carried on entirely by hearsay from these paid officers and McKay's representations, as above set forth.

9th. That the Board of Supervisors and people relied upon these representations in making the sale; that they were false, and misled both the supervisors and the people.

Rules of Equity.

The rule of equity adopted by the court, is that the agents must have *known the facts stated by them to be false* to stamp it as an illegal transaction. Says the court opinion, page 3, "Yet it would be difficult to say that it is clearly proved "that the agents of the defendant made any such direct "misrepresentation of facts, *known to them to be false*, as to "bring it within the category of a contract procured by "false representations." Appellees think this statement is not correct as a rule of law in equitable proceedings. We think that when an affirmative representation is made by act, words, or writing of a material matter of substance, false in fact, and which misleads the other party to an agreement, the party making the representation in a suit to rescind in equity is held to be liable for his representation. And whether he knew it to be false *or not* makes no difference. That a party cannot make representations affirmatively to the other party, false in fact, and acquire property by thus misleading; and hold the property afterward and justify on the ground of want of knowledge of falsity on his part. That equity requires parties dealing to tell the truth, and to know what they state to be true.

Mr. Story in equity jurs., sec. 193, gives the rule thus: "Whether the party thus misrepresenting a material fact "*knew it to be false*, or made the assertion *without knowing* "whether it were true or false is wholly immaterial; for the "affirmation of what one does not know or believe to be "true is equally in morals and law as unjustifiable as the "affirmation of what is known to be positively false. And

"if a party innocently misrepresents a material fact by mis-
"take it is equally conclusive, for it operates as a surprise
"and imposition upon the other party. (*Sec.* 193.) And
"whether the fraud was perpetrated by the party interested,
"or by an agent, if the act in which the fraud was committed
"is adopted by the principal. If the principal persists in
"taking the benefits of his agent's frauds, it is immaterial
"whether the fraud was originally concocted by the princi-
"pal or by the agent, the principal will be implicated to the
"fullest extent."

See also numerous cases cited in notes to the eleventh edition, secs. 191 to 193 *a*, inclusive.

We think the proof shows that McKay *really knew* he was giving a wrong impression, at least it *was* wrong, and that was sufficient.

Legislative Proceedings.

The frauds of this company became so notorious that in 1866, they became a subject of legislative investigation, as the following proceeding will show of which the court will take *judicial* knowledge.

Joint resolution, Senate Journal, (Iowa,) 1866, p. 566.

"*Resolved* by the House of Representatives (the Senate
"concurring) that a joint committee of five on the part of
"the House and three upon the part of the Senate, be
"appointed to examine and report as to the allegations of
"fraud and misrepresentations against the American Emi-
"grant Company, by William Baker, swamp land agent,
"and by Commissioner Edmunds, and to prepare a memo-
"rial addressed to the Secretary of the Interior, disavowing
"on the part of the State any knowledge of or participation
"in the alleged frauds on the part of the American Emi-
"grant Company in prosecuting claims for swamp lands,
"should such charge be found true, &c."

Under the above resolution a committee was appointed: the Emigrant Company appeared before them and made de-

fense, and the committee reported as follows: (Senate Journal, p. 567.)

"REPORT.—It appears from the evidence of agents of the company, and otherwise, that the agents of that company in some cases represented to the people of some of the counties that they had superior facilities for having the swamp claims allowed in the Department at Washington, and by other undue influences prevailed upon the people to enter into a contract for the sale of the swamp lands of the counties for a merely nominal price, entirely inadequate to the real value of the lands claimed.

"That the agents in some instances *made false and fradulent* proofs of swamp lands with a view to obtain for the company indemnity scrip and money for the benefit of the company, and this being discovered at Washington, induced the Commissioner to suspend the claims of many other counties in which the company had no interest. * * *

"That the agents of the company, as an inducement in obtaining contracts for swamp lands, in some cases, made promises to lease sheep to resident settlers, as a personal consideration to them to vote for the contracts, which your committee deem was in fraud of the rights of the county. That the agents represented to the people of the county that they were in danger of losing the swamp lands unless the proofs were speedily made of the swamp land selections, and that the company had extraordinary facilities for adjusting the claims, *and under this belief* they contracted the swamp lands to the company.

"Your committee believe that such representations were *not true*, and that this company had *no honest* facilities for adjusting swamp claims not possessed by other agents of the counties and of the State.

"Your committee further find, that the Emigrant Company has made contracts for the swamp lands of about twenty-five counties; that in one county there was a provision in the contract, that every resident settler might receive eighty acres of said swamp land at the price to be paid the county,

only a few cents per acre, which your committee considers an indirect bribe to the voters to sustain the contract. That up to December, 1865, in five of these counties, 57,000 acres had been patented; that the whole amount claimed by the company is over 400,000 acres; that indemnity scrip has been issued, claimed by that company for about 23,000 acres, and cash indemnity had been received for about $32,000. * * *

"That during three years past the attention of the Governor and register of State land office has been called by agents of the State to the alleged fraudulent transactions of the American Emigrant Company, as between the company and the counties, but the State officers had no authority of law to commence investigations or legal proceedings. * *

"That there are sufficient indications of fraudulent practices and misrepresentations in obtaining the contracts to render it advisable for the protection of the interest of the State and counties in which this company has been operating that legal steps be taken under authority of the State to annul the contracts referred to, &c."

The same legislature enacted a stringent law to keep all the lands and proceeds out of the company's hands, and a joint resolution, notifying the Secretary of Interior and Commissioner General Land Office. (For full history see Senate Journal 1866, pages 566 to 569; also Joint Resolution No. 21, and chapter 79 Acts of 1866, and evidence containing 200 pages.

IT WAS A GROSS FRAUD and misrepresentation to represent the right to *swamp land title and claims* doubtful, for the act of 28th September, 1850, was a grant *in presenti*, and vested an absolute ownership in the State to all the swamp and overflowed lands. The confirmatory act of 3d of March, 1857, (11 Statutes at Large, 251,) was intended as a full and complete confirmation of all the selections claimed by the State; and to authorize the patents to issue without further delay. These questions have been fully decided by this court. See.

Railroad *vs.* Fremont Co., 9 Wallace, 89.
Railroad *vs.* Smith, 9 Wallace, 95.
Allison *vs.* Halfacre, 11 Iowa, 450.
Lester Land Laws, page 549, No. 548.

The delay of the Secretary of the Interior to send a return list amounted to nothing after the confirmation. A list of the descriptions confirmed was filed in the land office, and the confirmatory act operated directly upon the tracts therein described. The railroad line was not adopted till the 24th March, 1857, as decided by this court in the case of Railroad *vs.* Fremont Co., *supra*. There might be delays in securing the adjustment, but no power of the land department could invalidate the right of ownership. It was absolute. To represent it as a doubtful right was a fraud. Nor was there any necessity to spend any money; the indemnity proofs were already filed, and there was no *honest* place where money was needed or could be used. Skinner, appellant's witness, testifies that *no proof* was required to ensure a patent for the four thousand acres of unpatented land in place; and as to the indemnity proof, the letter of the Commissioner, April 15, 1862, expressly shows that the Adams County proof was in *due form*. Here is definite proof as to the exact point, whether the Secretary of the Interior admitted the proofs of *other* counties or not, is entirely immaterial, as here is the direct evidence that the Adams County indemnity proof in question, was regular and *in due form*, and would be taken up and allowed as soon as reached in the regular order of business.

McKay had represented to the board that the patented lands were *doubtful* as to title; that the unpatented lands in place were uncertain, and the indemnity proof worthless, and to maintain consistency he inserts in the agreement a clause like this: "*If the company obtains the odd sections so-called.*" In the deed to three thousand six hundred and eighty acres, prepared by him, after examining the United States patent in the State land office for the lands, he inserted this remarkable clause:

"It is hereby declared to be an express condition of this grant that in case the county has not at this time obtained a perfect title in fee simple to any of said lands, that any interest, claim, or title thereto, the county shall hereafter acquire * * * shall inure to the benefit of the party of the second part without further conveyance thereof."

These covenants are *covert* misrepresentations. They are pregnant *frauds*. Congress had made the grant *in presenti*, and confirmed it by description as to these very lands; the patent had issued, and McKay had copied from that patent the numbers of the land into the blank deed sent to the board. Then why insert this covenant in the deed, questioning the title of the county, unless it be to foster in the minds of the board the doubt before inculcated.

Barnett—the chairman—testifies that "we thought the claim doubtful because McKay told us so, and we had *no other source of information* at the time to my knowledge."

Schooling—testifies, (Record, p. 159, inter. 13:) "I had no knowledge whether there were any patents for the two thousand acres or not."

If McKay was not guilty of actual fraud, he at least was dealing with public property in the hands of public agents who had no proper information as to the corporate rights. Added to the above, the representations made by appellant's agents, and retailed out to the people before the election, at his request, as to the settlement of these lands, the planting of groves and orchards, enhancing the value of property, settling the county, and bringing property into taxation; not one *item of which has ever been made good.* And the conviction is confirmed that the Board of Supervisors and people were under a complete delusion and misconception, not only as to the real nature, extent and value of the swamp land interest, but also as to the character of the party with whom they were contracting.

Appellant had its agent in Washington, another in New York, and McKay in Iowa. That they *knew* all about the real facts, and also knew the comparative want of knowl-

edge by the supervisors and the people, the New York circular, and the positive declaration of McKay, and the written contract and deed, and the outcome of the agreement, fully establishes. And that McKay permitted the board and people to enter into the contract, under a complete delusion and mistake throughout, is fully proven. The agreement being obtained by such concealment and overreaching, coupled with such mistake and false conception of rights, whether criminally fraudulent, or innocently done, a court of equity will grant redress. The following cases are in point:

Warner *vs.* Daniels, 1 Woodbury and Minot, 90.
McAllister *vs.* Barry, 2 Haywood C. C., 290.
Miles *vs.* Thad. Stevens, 3 Barr. top., 35–37.
Daniel *vs.* Mitchell, 1 Story, 172–189.
May *vs.* Snider, 22 Iowa, 525.
Wilcox *vs.* University, 32 Iowa, 367.

See also a celebrated case of Reynell *vs.* Sprye, in many of its features remarkably like this case, determined in the Court of Appeals in Chancery in England, reported in 1 DeGex, McNaughton & Gordon, pp. 696 and 697.

Also Mason *vs.* Crosby, 1 Wood. and Minn., 242.
Smith *vs.* Babcock, 2 Wood. and Min., 246.
Hough *vs.* Richards, 3 Story, 659.
Smith *vs.* Richards, 13 Peters, 26.
Boyce *vs.* Fundy, 3 Peters, 210.
1st Story Equity Juris., sec. 193–193, a.
1st Hilliard on Vendors, page 325, sec. 3.
1st Hilliard on Vendors, page 328, sec. 8.
Fry on Specif. Per., page 269, note 1.
Fry on Specif. Per., page 274, note 4.

SECOND. Neither is appellee bound to prove an actual known fraud to be entitled to relief, but from all the circumstances of the position of the parties and the facts surrounding the transaction, the disproportion of benefits derived under the agreement, inadequacy of consideration, and the

possibly the company would be in court with clean hands. Instead of doing this, however, he took a part of the money so received wrongfully and paid the $2,000 and procured by the way heretofore described, the recording and possession of the deed. Here was a fraud that would taint the whole transaction and render the agreement itself void. The case of *Reynell* vs. *Sprye*, above cited, is a clear, forcible, and well considered precedent, wherein the defendant had, by certain represetations to the plaintiff of the doubtful nature of his rights, procured a very advantageous contract in writing to an interest in some land. By representing that it would require a *lawsuit* to settle the right and it might *turn out to be worthless*, the written contract was made, and some time afterwards a deed was made under the written contract. In the interim between the date of making the agreement and delivery of the deed, the vendee obtained some additional and very important information, and evidence that plaintiff's rights were of vastly greater value than had been contemplated at the time of making the agreement. The defendant did not disclose this new knowledge to plaintiff, but procured the deed to be made and delivered as if the original facts and conditions still existed. Lord Cranworth held that it was the duty of Sprye, before accepting the deed, to have disclosed fully to the vendor the newly discovered facts, and as he had failed to do so, held that such concealment was such a fraud as vitiated the whole transaction, and the court set aside both the deed and agreement. *Vide* 1st De Gex, NcNaughton, and Gordon, page 707 to 709. Upon its *facts* and the principles of law relating thereto, this case is very similar to the case at bar.

VII.—Inadequacy of Price.

Appellee insists that, if for no other reason, the decree of the Circuit Court should be affirmed for gross inadequacy of price from which the court would presume fraud. The evidence clearly establishes that twelve thousand acres of land and indemnity claims *confirmed*, worth at minimum price $15,000 were sold for $2,000. That this $2,000 was paid out of the indemnity cash collected by the proofs represented as iected and worthless. *Not one single dollar* has ever been paid by the Emigrant Company of their own money for all

this property. The following authorities establishes the correctness of the Circuit Court's decree:

Domat Civ. L., Bk. 1, Tit. 11, sec. 9.—"In the sales of immovables, if the price be less than half the real value, the seller may get the sale to be declared *void*."

Fonblanque's Equity, p. 117, note *e*.—"Though courts of equity will not relieve against agreements merely on the ground of the consideration being inadequate, yet if there be such inadequacy as to show that the person *did not understand* the bargain he made, it may amount to fraud."

Story's Equity Juris., sec. 246.—"There may be such an unconscionableness or inadequacy in a bargain as to demonstrate some gross imposition or some undue influence, and in such cases courts of equity ought to interfere on the satisfactory ground of fraud, * * * and when there are other ingredients in the case of a suspicious nature, or peculiar relations between the parties, gross inadequacy of price must necessarily furnish the most vehement presumption of fraud." To same point, see also—

Woodfolk *vs.* Blount, 3d Haywood, 149.
Herne *vs.* Meeres, 1st Vernon Eng., ch. 465.
Howard *vs.* Edgell, 17 Vermont, 27.
Gwynne *vs.* Heaton, 1st Browns, ch. 9.
Holmes *vs.* Holmes, 1st Abbott, C. C., 530.
Hough *vs.* Hunt, 2d Ohio, 502.
Seymore *vs.* Delany, 2d Cowen, 537.

In Wright *vs.* Wilson, 2 Yergey, 294.—That gross inadequacy of price is a ground for setting aside a sale, and this seems to be the established rule, by the great weight of authorities. See exactly in point Holden *vs.* Crawford, 1st Aiken, Vermont, 390; McKinny *vs.* Pinckard, 2 Leigh, Va., 149; George *vs.* Richardson, Gilmer, Va., 230; Osgood *vs.* Franklin, 2 Johns., ch. 1; Wintermute *vs.* Snider, 2 Greens. N. J., ch. 489; Morlatt *vs.* Werwick, 18 New Jersey Equity, 108; Frye on Specific Perfor., sec. 279, n. 2.

VIII. Failure of Performance.

(*a*.) It is a general rule of law when one party fails to perform a valid contract the other party may treat it as

rescinded. 2d *Parsons on Contracts*, 5th ed., p. 678, notes *x* and *y*.

In this case the failure of defendant to perform his part of the contract in such a manner as to give the county the benefits of its stipulations, and failure to pay the price of the purchase, gives to plaintiff the right to rescind this agreement if it was otherwise valid. Klein *vs.* Catara, 2d Gallison. C. C., 74, 75; Mason *vs.* Crosby, 1 W. & M., 342; Putnam *vs.* Wescoat, 19 Johns., top 79; 2d Hill. *Vend.*, p. 225, notes 1 and 226, secs. 3 and 4; Frye on Specif. Per., sec. 593, note 1 and aut.; Story on Contracts, sec. 481, note 2, p. 486; 1st Parson's Cont., Tit. Failure.

Appellant was privy to the suit in Page county for fees for taking indemnity proofs, and was bound by the judgment. The appellant was a party to the suit, and was notified in the first instance, and was discharged on its own application, and the suit continued in name of appellee—the appellant furnishing an attorney. (See Record, pp. 74–78, and Evidence of Moore, p. 204.) And Bixby testifies, (Record, p. 182, inter 14–16): "It was always my understanding that the Emigrant Company would pay the costs of the suit. I represented to the board that I thought the company would foot the bills of the suit." It is settled law that a privy to such a suit is bound by the judgment. See Chicago *vs.* Robbins, 2d Black, 418; Trustees of Newburg *vs.* Gallatin, 4 Cowen, 345; Stoddard *vs.* Thompson, 31 Iowa, 80.

IX. Entire Failure of Consideration by Appellants' Willful Act.

There is a clause in the agreement as follows, (Record, p. 44): "Any contract now existing between the said county and any person in relation to said land or funds are to be respected and fulfilled by said company, as the Board of Supervisors shall decide to be just and right."

At the date of making this agreement the county was indebted to a former agent for surveying the swamp lands and taking indemnity proof in 1861. (Printed in the Record,

p. 81, Exhibit A.) At the time this agreement was made the agent was in the army.

This claim was, by order of the board, presented to the appellant for payment, who refused to pay the same. It was litigated by the appellant, and judgment was rendered, and the county was compelled upon execution to pay $2,735, judgment and costs. This sum appellant then *willfully* refused to pay.

The question of this claim became *res adjudicata.* It was a fixed and unchangeable fact that the claim was a just charge upon the indemnity "fund and scrip." The judgments are in the Record, the execution and proof of payment. No constitutional authority, State or Federal, could modify or reverse it. The county was *compelled* to pay it, being one of the plain obligations assumed by appellant.

It is a well settled principle of law that when a party to an agreement *suffers the law to take* property given as *the consideration* of the agreement and dispose of it, thereby defeating the benefits of the agreement to the other party, *the agreement will be held to be rescinded.* Keys *vs.* Granger, 52 En. Com. Law, p. 905; 2d Parson's Const., 5th ed., pp. 678–9, note X–y.

Three official demands were made, running through a period of nine months, all of which appellant denied. (Record, pp. 90, 93, 94, and 95.)

Certainly defendants had a reasonable notice to pay this judgment; this is the only effort at performance ever made by appellant. Not a dollar has the county received that they could retain for their own use as purchase money under this agreement. Not a single settler has been sent into the county by appellant; not a barley corn's length of ditch or levee has been dug or built in the county. The fine *artificial groves* upon every forty, and the *overladen orchards* with *golden fruits*, the *enhanced valuation of property*, the *increased taxation*, the *plethoric treasury*, the rapid growth and settlement of the county, always so desirable in these new States, once the visions of hope, are now realized disappointments. And the glistening church steeples, the commodious school houses and public buildings, once to be erected to the honor and

prosperity of the public spirited citizens by the "liberal donations" (see printed circular of S. P. Lyman) of appellant, are now demonstrated air castles; and instead of the laughing school boys, the song of the herdsman and the vesper bells, we still breathe the swamp miasma; and our ears are nightly greeted with the pumping song of mud hens, and the croaking of bull frogs, which repose by day, and gambol at night around the same tussocks, and devour tadpoles from the same pools of their ancestors a hundred generations past. In the language of Justice Woodbury, 1st W–M., p. 90: "The consideration, and all the stipulations of the contract, have, as to appellee, turned out to be 'moonshine;' in fact the light of a *single harvest moon* would benefit appellee more than the results of this contract."

X. Delivery of the Deed Procured by Fraud.

The deed was executed by the Board of Supervisors by filling up the blank form prepared and submitted to them by appellant's agent, McKay, contains this stipulation as to its delivery. (Record, bottom p. 47.)

"Resolved, That the said conveyance in the foregoing form be executed by this board and duly acknowledged so that the same may be recorded, and when so executed be delivered to the clerk of the district court of this county, to be by him delivered to the said company, its agents, or trustees, *whenever a mortgage in due form, duly executed and acknowledged by said trustees and ready for record, shall be delivered to him, the said clerk*, which mortgage shall fully convey back to said county *all lands and property* granted to said trustees by this conveyance, and shall *secure* to said county the *fulfillment* by the American Emigrant Company of *all the terms and conditions of the said written agreement so on file as aforesaid so far* as the same are to be kept and fulfilled on the part of said company."

McKay had made this proposition to the board to induce them to execute the deed in his letter of September 1st, (Record, top page 92,) where he says:

"The deed is *not to be delivered* to us until the mortgage is made *to secure your county in the fullest manner for the performance of all the conditions contained in the agreement made between us.*" Further on he says: "*As soon as possible* after we are advised of your action in this matter we shall *make and deliver the mortgage.*"

The evidence shows (see Bixby's evidence, Record, p. 181, inter. 11.) that *no mortgage* was ever made. That no authority was ever given for the delivery of this deed, that instead of making the mortgage as promised, the deed was left with this clerk, and in February, 1865, the defendants appointed this same clerk a special agent of their own, and that in June, 1865, after the $4,303 cash indemnity was received, the $2,000 was paid, the clerk as agent of the company assumed to hold the deed as the *property of the company*, without the execution of the mortgage, and placed the deed on record and sent it to the company. Wil *vs.* Iliff, 13 Ohio State, 250–4; Everts *vs.* Agnes, 6 Wis., 462; Fairbanks *vs.* Metcalf, 8 Mass., 230–9; Stiles *vs.* Brown, 16 Ver., 563; Church *vs.* Gilman, 15 Wend., 656–8.

SECOND. If the grantee get a deed into possession and have it recorded without the assent of the grantor, by fraud or mistake, *no title will pass*, and the fraud or mistake may be proved parolly. Hadlock *vs.* Hadlock, 22d Ill., 388; Althrop *vs.* Comstock, 2 Paige, top 484; Chadwick *vs.* Weber, 3d Greenleaf, Maine, 132; Cutts *vs.* York Co., 18 Maine, 200; Black *vs.* Lamb, 1 Beasly, N. J., 108–16; Roberts *vs.* Jackson, 1 Wendell, 486.

THIRD. If the grantor deliver a deed properly executed into the hands of a friend or other person than the grantor to be held by him until *a condition is performed* or something then named is done. *No title will pass until the condition be performed.* And the delivery of the deed to the grantee without condition performed is *no delivery.* Black *vs.* Shrew, 13th New Jersey, 457; Younger *vs.* Guilbear, 3 Wall., 636.

FOURTH. And a court of equity will set aside and cancel the deed, holding the fraudulent or improper grantee as a trustee for the grantor. *Vide* Story Equity Juris., sections 700 and 1265; Carey *vs.* C. C. & C. R. R., 5th Iowa, 557.

FIFTH. When an agent acting in a fiduciary relation assumes to act for both sides in making or executing a contract, equity will set aside the conveyance *without proof of*

fraud even though the consideration appears to be fair. *Vide* Davore *vs.* Fanning, 2d Johns., ch. 255.

XI. Ignorance of Officers as to Subject-Matter—Fraud and Bribery in Conducting the Election.

First. The evidence clearly establishes that neither the members of the board of supervisors or people had any just conception of the value of the property they were selling, but were in *gross ignorance* in reference to both the lands and indemnity claims. Every living member of the board at the time this evidence was taken (1871) testifies; and they all state substantially the same thing. The clerk of the board, John Bixby, who might be supposed to know something of it, and who gives his evidence for the appellant, states expressly, on cross-examination (Record, p. 189, cross-inter. 15): "In June, 1862, I did not have any clear understanding of the condition of the swamp land funds or claim."

Second. The revision of Iowa, section 251, provided that in submitting questions to the people:

"The *whole* question, including the sum to be raised or the amount; the *whole regulation*, including the time of its taking effect and penalty for violation, should be submitted. And revision section 988, under which this contract was submitted, required that *three copies* of the contract should be posted in *three* of the most public places in each township *four* weeks before election, together with a proclamation of the officer as to the manner of voting," &c.

The evidence is conclusive that not a *single* voter can be found who ever saw any copy of the contract posted. Larimer testifies that he looked for such a paper, but none was ever posted. The sheriff who posted other election notices that year says *no* such copies were posted; and Bixby, the clerk, says he *did not look at the law*, but was *guided* by what McKay *directed;* that he *relied on and trusted* to McKay entirely.

It is positively proved and not disputed, that the words:

"*For the sale of swamp land*," were written on the tickets. This would cover the two thousand acres of land as explained to the voters by Barnett, Smurr, Harlow, and Schooling, members of the board. But the proposition canvassed was "*for the contract*," (Record, p. 73,) from which it is clear that the proposition canvassed and the one voted upon were very different. If such an election, or contract obtained by the consent of electors under such facts, is *not void*, as appellee claims it is, certainly it was a *fraud* in equity.

XII. Swamp Lands.

The lands involved in this suit are swamp. It is so *alleged* in the *petition* and *admitted* in the answer. The list in evidence, Record, pp. 121, 124, shows the extent of overflow and character of the lands. The County Surveyor, Trippett, makes oath to them as such. The surveyor general certified them as such. They were duly reported and *confirmed* to the State as such by the act of the 3d of March, 1857. Hence they are *unfit for cultivation*, and must be fitted therefor by ditches, drains, and by the application of the proceeds of the lands themselves.

Swamp Land, under the act of 28th September, 1850, is defined as being "such lands as are usually unfit for cultivation, in ordinary staple crops, such as corn, wheat, oats, &c., in ordinary and average years; not such as are utterly *worthless* by reason of overflow, but such as cannot ordinarily be successfully cultivated."

Thompson *vs.* Thornton, 50 Cal., 142; Kernan *vs.* Griffin, 31 Cal., 465; Kernan *vs.* Allen, 33 Cal., 542; Keller *vs.* Brickley, 78 Ill., 133.

When a trustee has an interest in the trust property and conveys the property, the deed is *void*, except as to the interest of the trustee; and no property, public or private, can be acquired in the trust property in violation of the terms of the trust.

Price *vs.* Methodist Church, 4 Hammond, Mich., p. 547;

Story Equity Juris., sects. 1257, 1258, n. 2 and 3; Church *vs.* Marine Ins. Co., 1st Mason, 341.

A trustee will not be allowed to purchase at his own sale nor acquire any profit out of the trust property at the expense of the trust.

Story's Equity Juris., sects. 465, 1258; Fox *vs.* Harrah, 1st Ired., ch. 358; Tiffany & Bullard on Trustees, p. 481.

XIII. Appellant's Defense.

Appellant in its answer claims that the Adams county indemnity proofs were rejected, and were bad at the time McKay represented them as such. The replication denies this. Appellant introduces a circular decision of the Secretary of the Interior, of June 30th, 1862, *suspending* the indemnity claims of Louisa and Fremont counties, Iowa; on the grounds that only *one* witness was sworn, and that the witness should have known the land in 1850, &c. And claim that the ruling in that case included the Adams county proofs, (Record, p. 230.) The Adams county proof being filed shows that these objections would not apply to them. (Record, pp. 130, 131.) The Adams county proof was by *two* witnesses, who knew the land in 1850, and testify definitely to its character, the credibility of these two witnesses are certified to by the probate judge of the county, and clerk of the District Court, in all respects complying with the Secretary's decision. To make its defense plausible, appellant should have set forth a copy of the Louisa and Fremont county proofs, to show the similarity; until this is done it has no connection, to justify its allegation. The defense, if good, does not go to the extent of the allegation. The defense is only as to the proofs *taken*. The representation was that the *claim* itself for lands in place of the indemnity claims as well as proofs were worthless.

Besides the witness Powell, who saw the circular which was before the board, and to which *Smurr* refers, positively states that the circular dated June 30th, 1862, was *not* the one; for he says the county could easily have complied with

that one, and could not comply with the one before the board. (Record, top page 200.)

SECOND. Statute of Limitations.—Appellant claims in his brief, page 52, that the statute of limitations bars this action in *five years*. But he fails to show the court when the *five* years began to *run*. The time fixed *for making* the improvements in the agreement was January 1, 1865, and the action was begun in about *four years* thereafter. Besides the statute of Iowa provides that actions for recovery of real property may be begun in *ten years*. Further, there is *no plea* of the statute of limitations in the answer. Equity courts do not notice *arguments* as to limitations where there is no plea of that statute.

THIRD. Executed Contracts.—On page 53 of brief, the claim is made that the contract is *executed*, and, therefore, cannot be rescinded. Now to this claim it is only necessary to refer to the argument of appellant on page 28, at the bottom of the page. He says: "Would it not be sufficient to object to this contract *when the company seek to enforce it?* That it may never do." If it is *already* executed, as he says, why will counsel waive the execution of a part of it, in order that the executed part may be held conscionable?

Only two thousand and ten acres of land have been conveyed, a part of that has been sold by them—to that the county can make conveyances; to the unsold a deed may be returned, the company accounting for the proceeds of the sales, as to the one thousand acres indemnity lands and four thousand twenty-seven acres lands in place, no conveyances need be made. The Circuit Court's decree is admirably just for the appellant upon all these points. Furthermore, courts of equity do not always require that the parties shall be placed in precisely the same positions, where the action is between the original parties to the agreement, and when there is *fraud*, or when property has been procured by fraud or misrepresentation. The fraudulent purchaser cannot defeat a recision on the ground of a change of condition nor avail himself of such change. See in point the following

cases: Gatling *vs.* Newell, 9 Ind., 572; Ray *vs.* Haviland, 12 Ind., 364; Frost *vs.* Lowry, 15 Ohio, 215; Martin *vs.* Roberts, 5 Cush., top 129.

As to the cash indemnity, appellant can be required to disgorge its ill-gotten gains, and certainly as to that it will be *in statu quo*.

FOURTH. Ratification by estoppel.—On page 54 of brief appellant claims that the appellee has for seven years recognized the validity of this contract, and allowed the company to go on expending money, paying taxes, &c., and is thereby estopped. To this we may say there is not a glimmer of proof anywhere that the company has paid a farthing of taxes at any time. The agreement expressly provides that "no taxes *are to be levied on the land*," (see Record, top p. 44.) The presumption in the absence of proof is that no taxes have been assessed. As to the other points appellee says that by the original agreement appellant had *eight* years to settle and drain all the lands.

Appellee could certainly bring suit during that time, as no estoppel ought to arise before the time to make the settlements had expired. Had appellant claimed that this suit was brought *before* the time of performance had expired, and sought to *abate* the action, because a right of action had not yet accrued, there might have been some grounds for the argument. Limitations and estoppels don't apply to written contracts before the time of performance has expired.

FIFTH. As to the claims of appellant concerning *fraud and collusion* in the Page County suit, it is clearly established by the testimony of Morris, (Record, p. 168, inters. 18–21.) And by the evidence of Bixby. (Record, p. 182, inters. 14.) And by the deposition of Judge Moore, (Record, p. 204.) That appellant had the *whole control* of that suit itself. That attorneys employed by it managed it to the end, and the appellant agreed to abide the suit and pay the judgment, and that after the suit was ended it went back on this agreement as upon all other, according to custom. The letters were written during the *war* by a soldier who desired

individual speculation, first in the transfer by the States of their interest to the counties, thence to individuals who procured and filed *ex parte* proof. The proceedings of the Department show *efforts to correct the same by more stringent regulations in that respect.*"

"The practice which has since followed these instructions, in my judgment, should be *amended* by the adoption of further means in order to place the character of such selections beyond question or controversy. This is due alike to the States as well as the United States."

From which it is quite clear that the Commissioner's sole motive in investigating more stringently the swamp selections is based upon the fact that the land and money had *been transferred to private speculators*, and no longer belonged to the *State* or counties, and the proof was *not public* but *private*, and *ex parte*, and that was due to the honor of the State to see that the United States was not defrauded by the transfers. But still stronger and more direct is the record of appellant's counsel, the Hon. J. A. Harvey, at one time the Register of the State land office, of Iowa, having these very matters in charge, in his official report to the Governor of Iowa, on the 16th of November, 1865, as reported to the 11th General Assembly, he says—as if by inspiration imparting light upon his present very strange and inconsistent argument—Record, p. 243:

"Early in the administration of this grant, the Department seemed to receive the impression that Iowa was acting in bad faith; that she had selected a large amount of dry lands, and that, as if conscious of being in the wrong, and wishing to avoid difficulty with the General Government, she had transferred her interest to the counties, and the counties to private *speculators* and *land-sharks*, who, by means of this grant, are endeavoring to perpetrate a *gigantic fraud* upon the General Government. I say such seems to have been and still to be the impression at the Department at Washington, *and to its prevalence, in a great degree, if not altogether, may be attributed the difficulty we there meet with.*"

This is the official report of a sworn officer of the State to the General Assembly of Iowa, concerning a matter in his

charge, and is both the law and the fact, and from which Mr. Harvey cannot now either retreat or gainsay. It may be assumed, then, as an established fact, that the instructions and rulings of the 27th of June, 1862, did not apply to those counties whose lands *had not been transferred to private speculators.* That it was not the design of the Department that those rulings which, while they must of necessity include by general words a whole class of lands or proofs, were not intended to apply to those cases where the State or county claimed the lands or indemnity in their public capacity. It was the *speculators*, the *ex parte proof*, as Mr. Harvey terms them, the "*land-sharks*," who must meet these stringent conditions.

XV. Who Secured the Change of Ruling.

The Honorable J. A. Harvey, Register of the State Land Office in 1865, in his report to the 11th General Assembly, gives the State of Iowa the official facts as to who obtained a change of the decision of the 27th of June, 1862, a copy of which is found in the Record, p. 241, Ex. B., as follows:

"At the *interposition* of our *delegates in Congress* the Secretary reviewed, and so far *changed his decision* as to receive and consider *all proof* for indemnity *filed* in the General Land Office prior to 27th June, 1862; but all filed *subsequent to that date* must conform to the *new instructions*, thus making it necessary to retake a large amount of proof, at great expense to the counties."

Here we have the official report of a State officer that it was not the Emigrant Company, nor by their expense that the *old proofs* so far as they may have been suspended, were afterwards allowed, but it was by the interposition of *our* delegates in Congress that the ruling of the 27th June, 1862, was changed.

XVI. Value of Savery's Evidence.

The evidence of Savery as to the worthless character of the indemnity claims, and his services in getting them

allowed, is fully contradicted by the Record; because, if they were worthless, *how* could he get them allowed? And if the company believed them *worthless*, why where they using such extraordinary efforts to purchase them? And Exhibit "F," page 129, conclusively refutes his statements as to procuring the indemnity scrip. His bond and oath of office was not made till June 24, 1863, several months after the indemnity scrip had been allowed; and the letter of Commissioner Edmunds (pages 134 and 135) shows that Adams county was not among the claims Savery was looking after. Skinner, who resided at Washington, testifies that he knew nothing of the Adams county claim. If Savery could violate the express condition of his bond and oath of office in disposing of the money, he could with the same elasticity of conscience go still further in his testimony to secure the plunder.

XVII. Answer to Motion for Rehearing.

Denials.

1st. Appellee denies that the judgment of the Circuit Court was based upon the charges of fraud in the bill alone, as stated in the motion for rehearing. We say that there are no facts found stated in the decree, and the presumption is that all the allegations of the bill were sustained. The relief granted is proper under each and every one of the averments of the bill.

2d. We deny that the question of the repugnancy of the act of 22d March, 1858, "was not made in the court below," as averred; and assert that it was made on the first argument, and that question was expressly set down for reargument, and was a second time argued and printed briefs filed upon that very point by J. A. Harvey, Nourse, Kauffman & Holmes, of counsel; also by John Hooker, one of defendants.

3d. We deny that the trustees were condemned without being heard; for the record shows that at the time the deed was made, Hammond was president, Hooker treasurer, and Welsh a director of the company, and when the company

was sued all the officers of the corporation were necessarily before the court. If they desired to set up any special claim they should have done so; and Mr. Hooker did appear in the Circuit Court and file a printed brief of 14 pages upon the very question the court decided this case upon in the former opinion. Printed record, page 162.

As to Party Plaintiff.

It is admitted that a municipal corporation may be a trustee and execute a trust. Hence it follows that if in the execution of the trust the trustee shall be induced by fraud or indue influences to dispose of the trust property, or through his ignorance or mistake the trust property is likely to be lost or diverted, he may go into a court of equity and have redress, and a court of equity will go to the fullest extent in aiding him to recover the property, especially when the other party knew of the trustship and that he was dealing with a trustee for trust property.

Secondly. Plaintiff is a municipal corporation, and is not chargeable with intentional fraud or in aiding the diversion of a trust. The corporation may plead *ultra vires*, and can recover property when wrongfully disposed of without authority of law by its agents or through their instrumentality.

And under a broad charge of ignorance and fraud the court may grant relief for "a mistake," although no mistake is expressly alleged. The corporation will only be deemed to have committed a mistake without wrongful intent. Mason *vs.* Crosby, 1st W. & M., C. C., 342; Smith *vs.* Babcock, 2d W. & M., C. C.. 416; Story, Equity 140, 141, 142, 143.

As to Parties Defendant.

It is further objected in the motion that there are not proper parties to the bill, and the court cannot proceed with the cause, because the trustees named in the deed are not made parties.

This objection, if valid, would only apply to a very small

part of the subject matter of the suit, to wit, the 2,000 acres deeded lands.

The agreement covers the whole subject matter, and is made in the name of the Emigrant Company alone. No trustees are named in it. The deed made afterwards is based upon and in consideration of the agreement. The bill assaults the agreement and the delivery of the deed as a valid instrument. It will be seen by the court that the trustees as such have no legal interest in the suit except what they acquire from the face of the deed as a valid instrument.

If the agreement is void for fraud or illegality, then the deed based upon it is also void, and there is *no* deed and *no* trustee in fact. The questions at issue are all antecedent and prior to the existence of the trusteeship and the company itself is the only real party in interest.

SECOND. These trustees are non-residents of Iowa, are outside of the jurisdiction of our State courts. This suit was brought in the State court. The State statute requires the real party in interest alone to be made party; and for both these reasons they were not made parties. They having no interest until the deed is delivered and are beyond the jurisdiction of the court. (Revision of 1860, sec. 2,757.)

Union Bank Louisiana *vs.* Stafford, 12 How., 327.
New Orleans Canal Co. *vs.* Stafford, 12 How., 343.

THIRD. These three trustees are all members of the corporation and as such are already parties to the bill.

FOURTH. The objection for want of proper parties on appeal, ought not to prevail, except the party be indispensably necessary. See

Bank of Alexandria *vs.* Seaton, 1st Peters, 299.
Story *vs.* Livingston, 13 Peters, 359.

The objections should be taken by plea or answer. It is too late at the hearing to urge it, if a decree can be made against parties before the court.

Story *vs.* Livingston, 13 Peters, 359.
Seger *vs.* Thomas, 3 Black., C. C. 11.

And if the case may be decided as to parties present; that some other person has an interest beyond the jurisdiction of the court will not prevent a decree.

Elendorf *vs.* Taylor, 10 Wheat., 152.
Morland *vs.* Linde, 12 Wheat., 193.
Vatier *vs.* Linde, 7 Peters, 252.

AS TO ALLEGATIONS OF BILL.

The allegations of the bill are, that plaintiff was the owner of the property in dispute under the act of Congress and the legislature of Iowa, for certain trust purposes set forth, (Record, pp. 37 and 38.) And then avers that by fraud and illegality the plaintiff has been induced to make the agreement. The answer admits the ownership and trustship but denies the fraud and illegality. Now, upon appeal from the trial of this issue, it is too late to raise the question as to whether plaintiff could sue or was a guilty party all the time in disposal of the trust. That should have been raised in some manner in the pleading. That question is no more apparent now than it was in the Iowa court, and is in no manner raised in the pleading.

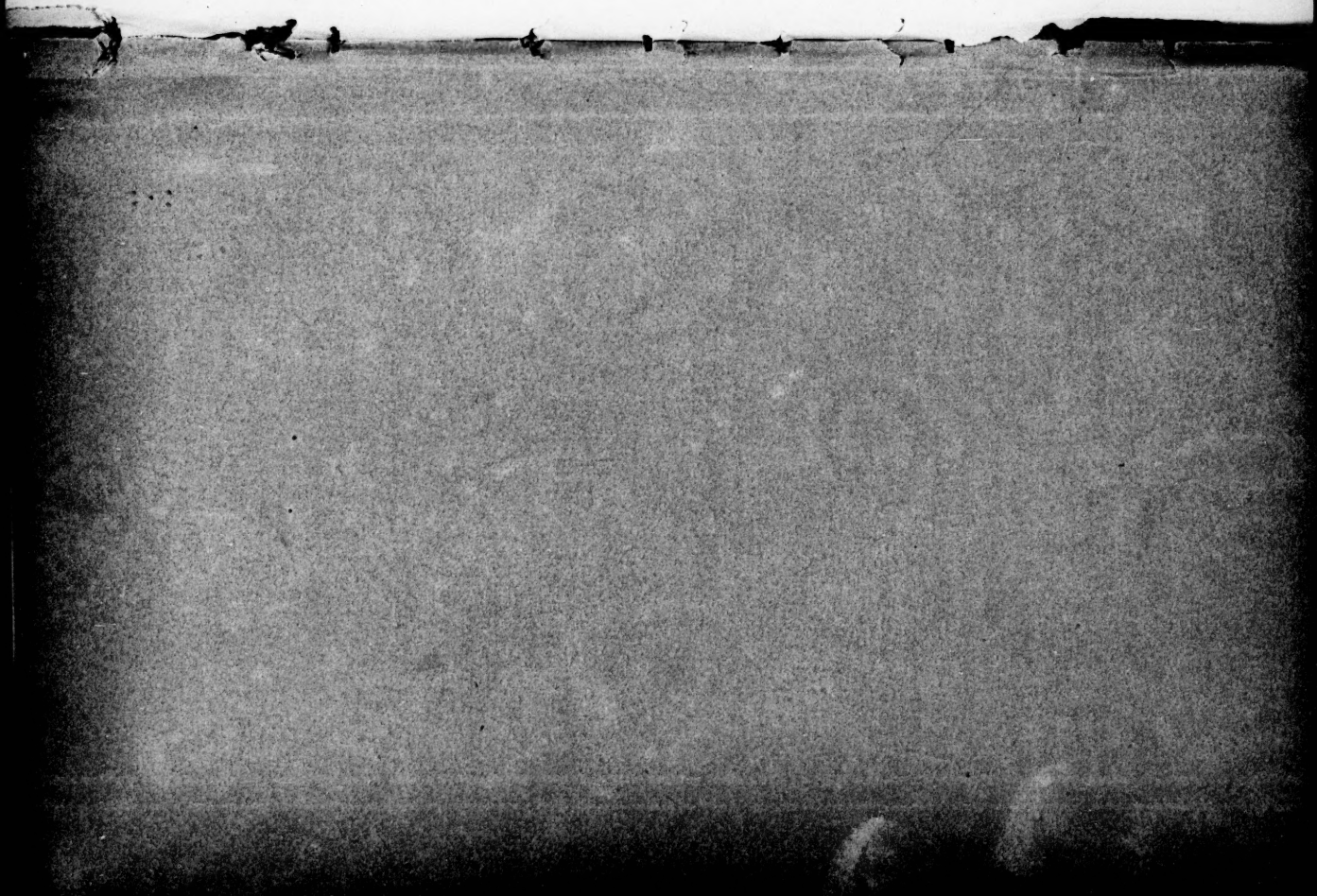
SECONDLY. The specific allegations of bill as to the legal issues are fully printed on page 13 hereof, and specifically raise the question of the validity of the laws of the State. Appellants fully understood them as such allegations, and distinctly and separately answered to them as such. The question was passed upon by the Circuit Court and appealed from. We think it is clearly averred that the laws of Iowa did not authorize this sale, because they were void for repugnancy. And when any one claims title or right to land under a State law, its invalidity for being repugnant to an act of Congress may be shown in any private proceedings. It has in many, indeed all the cases where the question of of repugnancy has arisen in this court, is upon private cases. *Cohens* vs. *Virginia*, 6 Wheat., 414, and other cases cited.

Conclusion.

We claim that all the arguments of the motion for rehearing are against public policy and in aid of fraud and injustice. Thus suppose the court dismisses the bill because the United States is not a party, then the United States will not thereby resume the land. The simple result is to practically confirm the lands into the hands of this private corporation. If it be true that plaintiff is guilty of aiding a diversion of the trust, then a municipal corporation can have an intent, a motive, can do wrong, commit crime, &c. And this principle would extend to all such bodies, even the United States itself. The plaintiff is a constituent part of the State of Iowa, which is a component part of the United States. The property is public property. The plaintiff claims that its agents were wronged and deceived. That appellant did not pay any money for the land, is not a good faith purchaser, and that plaintiff has the right to come into court and claim redress for the wrong as any other party. That in equity the burden would be upon appellant to show its innocence and *good faith* in this transaction.

Respectfully submitted,

FRANK M. DAVIS,
R. P. LOWE,
For Appellees.



Supplemental Brief upon Rehearing.

SUPREME COURT OF THE UNITED STATES.

The American Emigrant Co.,
Appellant,

vs.

The County of Adams.

APPEAL FROM THE CIRCUIT COURT OF IOWA.

FRANK M. DAVIS,
R. P. LOWE,
For Appellee.

Appellee makes the following additional points to the argument of appellant, filed since appellee filed their brief, to wit:

AS TO WANT OF PARTIES.

We contend that the trustees named in the deed for 2,010 acres of land were not *indispensable* nor *necessary* parties; that at most they were but nominal parties, under the laws of the State of Iowa, where this suit was begun in the local court. When the cause was transferred to the *Federal* Court that court could not require them to appear by any process, they being residents of the State of Connecticut. *Revised Statutes U. S., sect.* 639, last clause; *Nazro* vs. *Cragin*, 3*d Dillon, C. C.*, 475; 17 *How.*, 424; 4 *Wash., C. C.*, 84; *Rule of Practice, No.* 47; *Freeman* vs. *Nichols*, 8 *Wall*, 50; *Woodruff* vs. *Turpnall*, 10 *How.*, 206; *Curran* vs. *Arkansas*, 15 *How.*, 304.

II. We contend that the trustees were *naked* and *dry* trustees without any power to dispose of the property, and not proper parties, nor were they bound to defend if subpœnaed, and if required to answer would have been entitled to a judgment for costs. *Rule of Practice*, No. 54; *Perry on Trust*, sect. 520; *Holland* vs. *Baker*, 3 How., 72, 73; *Lewin on Trust*, 799; 2d vol. *Perry on Trust*, sect. 521. *Dan. Ch. Pr.* top p. 247.

III. We contend that if there is any defect of parties it appears on the face of the petition, and no objection having been taken by demurrer or answer the defect is *waived*. That no relief being prayed for against the trustees, the court will proceed to make a proper decree as to parties before the court. *Rule of Practice*, No. 53; *Revision of Iowa*, sect. 2876, Part 4, and sect. 2878; *Ryan* vs. *Mulinix*, 45 Iowa, bot. 632; *Story's Equity Pleas*, sect. 149, sect. 221, n. 2.

IV. We contend that the petition for rehearing should not be allowed, because it was filed *after* the court had ordered a mandate to issue. *Brown* vs. *McArthur*, 7 Wheat., 53.

Foreign Corporations.

I. The statutes of Mortmain are in force as *common law* in Iowa. *Blackstone Com.* (Cooley) 268 to 273, n. 4. *Ang. and Ames on Corp.*, sec. 149; *Grant on Corp.*, sect. 98; *Gardner* vs. *Coles*, 21 Iowa, 365; *O'Farrall* vs. *Simplot*, 4th Iowa, 381; *Goodwin* vs. *Thompson*, 2d Geo. Green., 329.

II. That a foreign corporation can only make contracts, acquire and hold property subject to the express consent of the State, is sustained by the following authorities not heretofore cited: *In re Comstock*, 3d Sawyer, 218, S. C. 11, *Nat. Bankrupt Reg.*, 171–2; *Insurance Co.* vs. *Slaughter*, 11 Ind., 520; *Cin. Mut. Co.* vs. *Rosenthal*, 55 Ill., 90; *Etna Ins. Co.* vs. *Hovey*, 11 Wis., 412.

III. THE FOLLOWING STATUTES

are printed for information of the court, relating to the American Emigrant Company:

Revision of 1860, sect. 1152. Previous to commencing any business, except that of their own organizations, they must adopt articles of incorporation, which must be recorded in the office of the Recorder of Deeds of the county where the principal place of business is to be, in a book kept therefor.

SEC. 1163.—Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or liabilities, shall subject those guilty thereof to fine and imprisonment, or both, at the discretion of the court.

IOWA LEGISLATURE, ACT OF 1866, CHAP. 79.

Be it enacted by the General Assembly of the State of Iowa,

* * * * *

SEC. 6. All indemnity script received from the General Government and all swamp lands patented to the State shall be conveyed to the counties to which they belong, and all money and indemnity script received shall be placed under the control of the supervisors of the several counties to which they belong, leaving the counties thereof, through their respective boards of supervisors, to settle with their grantees.

Joint Resolution, No. 21, *Act* 1866, (*Iowa.*)

Be it resolved by the General Assembly of the State of Iowa. That the Register of the State Land Office be, and is hereby instructed to inform the counties, in which contracts referring to swamp land have been made with the American Emigrant Company, of the substance of the report of the joint committee appointed to investigate the alleged frauds and misrepresentations of that Company.

That the Governor be, and is hereby requested to inform the Secretary of the Interior, and Commissioner of the General Land Office, of the substance of the report of the joint committee, appointed to investigate the alleged frauds and misrepresentations of the American Emigrant Company.

No. 32, (*Connecticut,*) *Incorporating the American Emigrant Company.*

Resolved by this Assembly, That Andrew G. Hammond, Francis Gillette, John Hooker, Franklin Chamberlain, Henry K. W. Welch, &c., &c., * * * and their successors and assigns, be, and they are hereby, made a corporation, under the name of The American Emigrant Company, for the purpose of procuring and assisting emigrants from foreign countries to settle in the United States, and especially in the Western States and Territories of the same, for actual settlement where there is nothing in the laws of the States and Territories wherein such lands shall be situated that shall forbid such purchases and holding or where license shall be obtained from any such States and Territories authorizing such purchases and holding, and with all the usual corporate powers necessary and proper to carry out the objects of the corporation.

SEC. 2. (Prescribes the capital stock.)

SEC. 3. (Relates to by-laws and elections.)

SEC. 4. (Relates to governing officers.)

SEC. 5. (Meeting of stockholders, and voting.)

SEC. 6. (Fixes date and place of first meeting.)

SEC. 7. (Requires a statement of assets and liabilities each year to be filed with Secretary of State of Connecticut.)

SEC. 8. (May be amended or repealed at pleasure of Assembly.)

(All passed May session, 1862.)

FRANK M. DAVIS,
R. P. LOWE,
For Appellee.